

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11148

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARY ELLA HARRIS, *Appellant*,

VS.

SADIE BEATRICE HARRIS, *Appellee*.

589

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Appeal from the United States District Court
for the District of Columbia
—

BRIEF FOR THE APPELLANT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED OCT 3 - 1951

Joseph W. Stewart
CLERK

—
STANLEY E. OTTO,
1219 Good Hope Road, S. E.,
Washington, D. C.,
Attorney for Appellant.

QUESTIONS PRESENTED:

1. Whether after issues are formulated at a pre-trial hearing and an order reciting such action, does such pre-trial order govern and control the subsequent course of action, the issue being the validity of a foreign decree of divorce.

2. Whether a foreign decree of divorce may be collaterally attacked, when the issue is whether the foreign court had jurisdiction of the persons or property.

3. Whether a legal wife must affirmatively assert her status by any procedure until her legal rights are put in jeopardy, and accrue.

4. Whether the court erred in permitting the issue of laches to be introduced and considered at the trial hearing, contrary to the Pre-Trial Order.

5. Whether a claimant to dower is to be denied dower by reason of the doctrine of laches, when claimant immediately informs and makes claim of such dower right to the Executrix of a will, and subsequently to the Administrator d.b.n., c.t.a. and further proceeds, when called upon, to prove her claim with no lack of diligence upon her part.

6. What are the requisites of dower, and when does the right to dower accrue?

7. Whether a testator may, by specifically naming a person as "his wife", create a dower right in favor of such person to the exclusion of a legal widow claimant.

8. Whether the intention of a testator as to the disposition of his property is the controlling factor in interpreting a will.

9. Whether the Court instructed and ordered the Ad-

ministrator, d.b.n., c.t.a. contrary to D. C. Code (1940 Ed.) Title 30, Sec. 101.

10. Whether the Court correctly directed and instructed the Administrator d.b.n., c.t.a. to recognize as legal a marriage entered into by decedent, and the Appellee, respondent below, dated June 14, 1936, when the records show that Appellee was, at the time of said date of marriage, married to another man, living, from whom Appellee was not divorced.

11. Whether the judgment of the Court is supported by or consistent with its findings of fact and the evidence adduced at the trial.

12. Whether the ruling of the Court is inconsistent with the Order of the Court.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11148

MARY ELLA HARRIS, *Appellant*,

VS.

SADIE BEATRICE HARRIS, *Appellee*.

**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR THE APPELLANT.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is predicated upon provisions of Section 17-101, D. C. Code (1940 Ed.), 41 Stat. 1312 Section 12. This action originated as a result of the Appellant and Appellee each claiming a dower right in the estate of Joshua Harris, deceased (J. A. 3), and the subsequent filing, by the Administrator, d.b.n., c.t.a., of a Petition for Instruction to determine who was entitled to dower (J. A. 5).

After trial, a final judgment was entered in the Court below, the terms of which instructed the Administrator, d.b.n., c.t.a., that the Appellee was the surviving widow of Joshua Harris, deceased, and that in the distribution of the decedent's estate, Appellee shall be entitled to such share of decedent's estate as the law provides for distribution to decedent's widow (J. A. 17). The Appellant, respondent below, duly noted an appeal from such judgment (J. A. 18).

STATEMENT OF THE CASE

The will of Joshua Harris, deceased, was filed October 11, 1948, the pertinent part thereof reciting—"Second, I give, devise and bequeath to my beloved sister, Lillie Harris, now residing at 1833 Providence Street, N.E., Washington, D. C., all of my real, personal and mixed property which I now have or may in the future acquire, and wherever situate, to have and to hold the same absolutely and in fee simple, subject only to the Dower right of my wife, Sadie Beatrice Harris" (J. A. 2).

On January 12, 1949, a Petition for Probate of Will and for Letters Testamentary was filed by Lillie Harris, executrix, in which it was set forth that Appellant and Appellee each made claim of dower in the estate of Joshua Harris, deceased, by reason of a legal marriage between the parties; Appellant and decedent being married November 17, 1917, and Appellant claiming the marriage as not being legally dissolved during the life-time of the decedent, although the petitioner reported that among the decedent's effects there was found a purported "Final Decree of Divorce" between Joshua Harris, deceased, and Appellant. Appellee and decedent being married June 14, 1936 (J. A. 21).

On January 30, 1950, after the death of the Executrix, a Petition for Letters of Administration, d.b.n., c.t.a., was filed, the petitioner reciting precisely, and in substance the same facts as to the claims of the Appellant and Appellee (J. A. 3) as appearing in the prior pleading. The Administrator, d.b.n., c.t.a., being originally and continuously the Attorney of record for the estate.

During all of the intervening time, and after, a diligent search, inquiry and investigation of the respective claims of the Appellant and Appellee was made. The Administrator d.b.n., c.t.a. on August 18, 1950 filed a Petition for Instructions setting forth the results of the investigations (J. A. 5). Succinctly (J. A. (Para. 4A) 5), Appellant married Joshua Harris, deceased, November 22, 1917, at

Alexandria, Virginia; a final decree of divorce was granted in the case of Joshua Harris vs. Mary E. Harris, in the Circuit Court of Fairfax County, Virginia, dated December 5, 1936, but that Appellant denied all knowledge of same, including service, until after the death of decedent, November, 1948, and that to Appellant's knowledge, Joshua Harris, deceased, was never a resident of nor domiciled in the State of Virginia (J. A. (Par. 4B) 6). Appellee married Joshua Harris, deceased, June 14, 1936, at Washington, D. C., Appellee using the name of Sadie Beatrice Redmond (J. A. 21 (Exhibit 4)), that also of record (J. A. 21 (Exhibit 5)) Appellee married Owen D. Redmond August 15, 1913 at Washington, D. C., and that no record was found indicating a divorce between Appellee and Owen D. Redmond; that also of record (J. A. 22 (Exhibit 6)) Owen D. Redmond had lived until December 15, 1941. (J. A. 6 (Para. B)) The Court's attention was called to facts as shown by the investigation that Joshua Harris, deceased, had been a resident of and domiciled in the District of Columbia from about 1922 until his death, 1948, living at 1833 Providence Street, N.E., Washington, D. C.; that in the records of his employment (J. A. 18-19 (Exhibits 1 and 2)) his given address as of December 20, 1934 and January 21, 1935 was 1833 Providence Street, N.W., Washington, D. C., the dates given being less than one year before the date given in the "Final Decree" of divorce, December 5, 1935, one year being a jurisdictional time of residence and domicile required in the State of Virginia; further, that Mrs. Marion J. Bailey, nee Marion J. Brown, was generally known as the adopted daughter of the deceased, and lived at 1833 Providence St., N.E., Washington, D. C., during the years of 1923 to 1948, with decedent at said address, and that during all those years decedent was not away from place of abode more than 24 hours at any one time, and that decedent was never known to be a resident of or domiciled in the State of Virginia (J. A. 7 (Para. 5)). The Administrator, d.b.n., c.t.a., by reason of the result of the investigation asked the Court to determine the relative rights to dower of the

Appellant and Appellee and caused citations to be issued to Appellant and Appellee, respondents below (J. A. 8 (Prayer 1)) and a trial be had on the issues.

On September 1, 1950, Appellant, respondent below, filed an answer to the Petition for Instructions (J. A. 8) which in substance corroborated the investigation and report of the Administrator, d.b.n., c.t.a.

On November 9, 1950, Appellee, respondent below, filed an answer to Petition for Instructions, which also, in substance, corroborated the investigation and report of the Administrator, d.b.n., c.t.a. (J. A. 10).

On February 29, 1951, an Order Framing Issues was filed (J. A. 14).

On March 19, 1951, there was a pre-trial of the issues involved and Pre-trial Proceedings filed (J. A. 15).

On April 18 and 19, 1951, trial was had in the lower Court. The Appellant and six of Appellant's witnesses testified. Appellant substantiating her claim to dower right as contained in her Answer to Petition for Instructions (J. A. 8), the remainder of the witnesses unremittingly established that Joshua Harris, deceased, had been and was a resident of and domiciled in the District of Columbia from the years of 1922 to the date of his death in 1948 without interruption, and exhibits one to six (J. A. 18-22), inclusive, were introduced into evidence. Exhibit No. 5 adduced that Appellee was married to Owen Redmond (J. A. 21) at the time of her marriage to Joshua Harris, deceased (J. A. 21). Upon conclusion of the case for Appellant, the Court orally announced its findings (J. A. 65), subsequently, on May 7, 1951, an Order Instructing Administrator, d.b.n., c.t.a., was filed (J. A. 17).

POINTS RAISED ON THIS APPEAL

The Court below erred as follows:

1. In holding that the Appellant was precluded from collaterally attacking a foreign judgment of divorce on the ground of lack of jurisdiction.

2. In holding that Appellant lost the right to dower because of no action having been taken to set aside the foreign decree of divorce until the right to dower accrued.

3. In refusing to adhere to issues formulated at a pre-trial hearing and an order reciting such action.

4. In entering the order of May 7, 1951 compelling the Administrator, d.b.n., c.t.a. to recognize, as legal, the marriage of Appellee and Joshua Harris, deceased, dated April 14, 1936, and thereby recognize as legal the right of dower in the Appellee in contradiction of the District of Columbia Code of Laws.

5. In entering the order of May 7, 1951, contrary to and inconsistent with and unsupported by the evidence, record and the law of the case.

6. And for other errors which may be apparent from the record, or come to the attention of the Appellate Court.

STATUTES AND RULES INVOLVED

D. C. Code (1940) Title 30, Section 101, 31 Stat. 854, provides.

Prohibitions: Marriage Void ab initio.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First: * * *

Second: * * *

Third: The marriage of any persons either of whom has been previously married, and whose previous marriage has not been terminated by death or a decree of divorce.

Rule 16, F. R. C. P.

Pre-trial Procedure: Formulating Issues.

* * * * *

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

* * * * *

SUMMARY OF ARGUMENT

1. A right to dower is dependent upon a legal marriage and does not accrue until the death of the husband and a living husband may not by will or otherwise circumvent or create a dower interest or right in any one other than his legal wife.

2. Appellant and Appellee each, immediately made claim to dower in the estate of Joshua Harris, deceased, when such right accrued; and when called upon by the Administrator d.b.n., c.t.a., by reason of a Petition for Instruction being filed, to prove their relative claims, each responded by an answer thereto; each, by representation of Counsel, appeared for a Pre-Trial of the issues involved and each appeared for a trial of the issues in the District Court.

3. Appellant legally married the decedent November 22, 1917. The dower right she claimed was only jeopardized by reason of a purported decree of divorce procured by the decedent against her in the State of Virginia. That being the only real issue, Appellant collaterally attacked the foreign decree of divorce on the grounds of lack of jurisdiction, in its inception, and competent testimony was

adduced at the trial, clearly and unequivocally establishing that Joshua Harris, deceased, during his life time had never been a resident of or domiciled in the State of Virginia. This being uncontroverted, the decree of divorce in the State of Virginia was null and void and of no effect in its entirety.

4. Appellee, purportedly legally married the decedent, as the records show, on June 14, 1936, and made her claim to dower by reason of this marriage. However, the record clearly establishes that Appellee on said date was married to Owen Redmond, and that this marriage had not been legally dissolved and by reason thereof, in accordance with the District of Columbia Code of Laws, (1940 Ed.) Title 30, Section 101, such marriage referred to having been contracted in Washington, D. C., the marriage of Appellee with the decedent was void ab initio and of no effect. However, the District Court, by its judgment, directed the Administrator, d.b.n., c.t.a. in substance, to recognize as legal the marriage entered into by Appellee and decedent, dated June 14, 1936, and declared Appellee entitled to dower by reason thereof.

5. The District Court in its Ruling and subsequent Judgment stresses that Appellant knew about the divorce obtained by decedent as well as did most of "Mr. Harris' friends," and took no steps at any time, anywhere, to attack the judgment of divorce. To the contrary, the record and evidence establishes no basis for such a conclusion, and further, Appellant's rights and interests did not accrue until after the death of her husband, Joshua Harris, and immediately upon the happening of that event, Appellant made her claim to dower and attacked the judgment of divorce at the proper time.

6. The District Court completely disregarded or refused to consider the District of Columbia Code of Laws and the Pre-Trial Rules of Court involved.

ARGUMENT

I

Dower is an Inchoate Right and Not Subject to the Caprice of a Testator. The Court Erred in Considering the Naming of a Person in a Will as a Basis for a Dower Right.

The testator by his will devised and bequeathed to his sister, Lillie Harris, all of his estate, "subject only to a Dower right of my wife," and adding the name, "Sadie Beatrice Harris." The lucidness of the bequest is undeniable, the testator's admonishment was to vest his entire estate in his sister, subject only to a dower right. (J.A. 2)

The entity of dower is best defined by the requisites of dower, *Loughran vs. Loughran*, 294 U. S. 216, "Three things are necessary to the consummation of the widow's right to dower: A valid marriage; seizen of the husband and his death."

Dower is a technical word, and, *Daniels & Fisher Realty Co. vs. Kenyon*, 261 Fed. 407, "Where a testator uses in his will technical words or terms, or words having a definite legal signification, he will be presumed to have used them in that sense, and the will will be so construed unless a clear intention to the contrary is apparent from the context."

The naming of a legatee entitled to dower in a will is of little consequence, *In re Hendrickson's Estate*, 203 N.W. 778, "Where the will is clear that the testator bequeaths property to a legatee for a particular purpose, and it is disclosed that such legatee is misnamed, it ought not to make any substantial difference whether the name used is of no other party or a party not intended, the right legatee ought to be ascertained."

II.

The Appellant's Claim to Dower was Timely and Diligently Pursued. The Court Erred in Applying the Doctrine of Laches.

The Appellant's right to dower did not accrue until the death of her husband. The implication of the Court is that Appellant should have acted before the death of her husband. *Loughran vs. Loughran*, 258 U. S. 216, "The estate" (dower) "in all its grades demands for its existence the marriage and seizen, but it does not become consummate until after the husband's death."

The Appellant, upon the accrual of a right to dower, immediately took affirmative action consistent with her right and duty and has diligently pursued her claim to the present time. The record is clear without equivocation as to this fact. *Galliher vs. Cadwell*, 145 U. S. 368, "To charge a party with laches in delaying to assert a right, an opportunity must have existed."

The only other inference to be adduced as to the application of the doctrine of laches, which was not a pre-trial issue (J.A. 14-15), by the Court is that the Court imposed a requirement upon the Appellant of a legal duty and obligation to affirmatively act prior to the death of her husband. The Appellant legally married the decedent and in no way breached or violated her contract of marriage with the decedent during his life time. The record and evidence substantiate the fact. Assuming the Appellant knew of the divorce action, knew that decedent and Appellee had married, there still was no legal duty or obligation upon the part of the Appellant to affirmatively act if such divorce was illegally procured and the marriage of the Appellee and decedent was illegally consummated. The right to dower accrued at the time of the death of the decedent and not before, and a valid marriage is the essence of vested right to dower.

III.

**Pre-Trial Issues Formulated Govern and Control the
Subsequent Course of Action. The Court Erred in
Failing to Follow the Same.**

It is submitted that in reaching its decision, the lower Court failed to give due consideration created by Rule 16, F.R.C.P., but rather refused and ignored the order of the Pre-Trial Court concerning the issues formulated.

Appellant, through her attorney of record, at a pre-trial hearing, actually presented but one issue, viz., denying the legality of the foreign decree of divorce for lack of jurisdiction of the foreign state to grant the same. This issue was formulated and an order reciting same was entered by the Pre-Trial Court (J.A. 14). Consistently, this Court has ruled, *Owen vs. Schwartz*, 85 U. S. App. D. C. 302, 177 Fed. 2nd 641, "The purpose of Rule 16, Federal Rules of Civil Procedure, is to formulate the issues for trial, and when the issues are formulated at a pre-trial hearing, the court is required to enter an order reciting such action. When entered, such pre-trial order controls the subsequent course of the action." An anomaly occurred, the lower Court permitted the Appellant to present, at trial, her entire case, and then refused to consider the issue involved.

Attention is called to the two cases of *Gullet vs. Gullet*, 80 U. S. App. D. C. 73, 149 Fed. 2nd 17, and *Gullet vs. Gullet*, 85 U. S. App. D. C. 13, 174 Fed. 2nd 531, where the facts and issues were strikingly similar to the instant case. The lower court refused to consider and ignored the pre-trial issues and orders in the first case, namely the contentions of the parties as to the validity of a foreign decree of divorce, lack of jurisdiction being questioned on the grounds of nonresidence. The lower court said, "The Court is of the opinion it is not necessary for the Court to pass upon this question as to whether or not he acquired a dom-

icile in Florida, or whether or not there is any constitutional question involved." On appeal, this Court ruled, "The Supreme Court and this court have declared the law to the contrary," and "Reversed." In the second case, the lower court followed the pre-trial issue ordered, and ruled in favor of the plaintiff. Upon appeal to this court, the judgment was "Affirmed."

It is intimated in the ruling of the Court that the Administrator d.b.n., c.t.a., was asking the Court to collaterally attack the foreign decree of divorce. The Administrator, d.b.n., c.t.a., as the record shows, petitioned the Court to resolve the relative claims of dower made by the Appellant and Appellee (J.A. 7). The purpose is clear, as well as the purport of the petition filed.

IV.

The Legal Right of Appellant to Collaterally Attack a Foreign Decree of Divorce for Lack of Jurisdiction is Axiomatic. The Court Erred in Refusing to Give the Proper Consideration to the Record and Evidence Pertaining to the Collateral Attack and Thereby Annuling Appellant's Claim to Dower.

The Appellant interposed as a defense to a claim of dower a collateral attack upon the divorce decree granted the testator in the Circuit Court of Fairfax County, Virginia, for lack of jurisdiction (J. A. 3 and 8).

The testimony of the Appellant and six of Appellant's witnesses, as the record clearly shows, established that the testator was domiciled and a resident of the District of Columbia and was not known to be at any time a resident of the State of Virginia. Under facts quite similar in detail and substance, as appearing in the case of *Sears vs. Sears*, 67 App. D. C. 379, 92 Fed. 2nd 530, this court ruled: "A

decree of city corporation court of city in Virginia, granting divorce to wife who was not actual resident of such state for one year before filing bill, as required by law thereof, nor actual resident of city at time of filing bill, but actual resident of and domiciled in District of Columbia, was invalid in such district, so as to render her subsequent marriage therein void and to bar recovery by her suit against second husband for limited divorce and alimony."

In *Evans vs. Evans*, 80 U. S. App. D. C. 133, 149 Fed 2nd 831, "A divorce decree rendered by a Nevada court upon substituted service may be challenged in the District of Columbia on ground that moving party in the Nevada proceedings was not a bona fide domiciliary in that jurisdiction, notwithstanding the full faith and credit clause of the Federal Constitution. U. S. C. A. Const. Art. 4, 31."

In the first case of *Gullet vs. Gullet*, 80 U. S. App. D. C. 73, 149 Fed. 2nd 17, " * * * My ruling is that the marriage in Florida does not have any effect whatever upon this maintenance case." "The Supreme Court and this Court have declared the law to the contrary." And in the second case of *Gullet vs. Gullet*, 85 App. D. C. 13, 174 Fed. 2nd 531, "The proof presented was practically identical with that which was in record on the former appeal. * * * the District court found the Florida divorce decree was obtained by appellant's fraudulent representations to that court of a bona fide resident in Florida, a false representation of a jurisdictional fact." This ruling of the lower court was "Affirmed" on appeal.

In accordance with the District of Columbia Code of Laws (1940 Ed.), Title 30, Section 101, " * * * The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely * * * Third: The marriage of any persons either of whom has been previously married, and whose previous marriage has not been terminated by death or a decree of divorce."

The purpose, intention and meaning of the statute is quite obvious, viz., the act of going through a ceremonial marriage does not create the marriage relation if one or both of the parties have an impediment, such as an existing marriage. In such instance, such a marriage would be "absolutely void ab initio, without being so decreed and their nullity may be shown in any collateral proceedings." The implication as to that portion reciting "the termination of a marriage by decree of divorce" can have but one meaning—a legal divorce.

A divorce decree may be collaterally attacked where the court of the foreign state had no jurisdiction to render the judgment. Jurisdiction is dependent upon the domicile of the plaintiff in the state for the length of time prescribed by statute and upon the observance of the requirements as to procedural due process. *Williams vs. North Carolina*, 317 U. S. 287, followed by *Williams vs. North Carolina*, 325 U. S. 226, *Esenwine vs. Commonwealth*, 325 U. S. 279.

A more recent case which is analogous to the instant case is that of *Rice vs. Rice*, 335 U. S. 842, Supreme Court case No. 117—October Term 1948. In this case Mr. and Mrs. Rice lived together in Connecticut for about twenty years. Mr. Rice then left Mrs. Rice and went to Reno, Nevada, and shortly thereafter filed a complaint of divorce against his wife. The complaint and process were handed to Mrs. Rice at her home in Connecticut. She was not served with process in Nevada. There was a trial at which Mr. Rice testified he had rented a furnished room in Reno and that he intended to remain there "indefinitely." He was awarded a divorce from Mrs. Rice.

After the divorce, Mr. Rice remarried and retained the room in Reno, which was occupied by him and his second wife. Subsequently they moved to California, where six months later Mr. Rice died.

The first Mrs. Rice brought an action in Connecticut to have herself declared his widow insofar as Connecticut real

estate was concerned. The court reviewed the evidence as to whether Rice established a good faith domicile in Nevada and held that he had not and was not entitled to maintain an action there for divorce.

On a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut, the second wife as Petitioner, filed suit in the Supreme Court of the United States, resulting, Per Curiam, in the affirmation of the Connecticut ruling.

V.

The Marriage Between Appellee and Decedent Herein at Washington, District of Columbia, June 14, 1936, Was Void. The Court Erred in Holding the Marriage Valid.

The record is unequivocally clear, the Appellee as of June 14, 1936 was legally married to Owen Redmond and the marriage had not been dissolved by a divorce or death. The Appellee's answer, under oath, to Petition for Instructions (J. A. 10) admits such marriage, admits no knowledge of a dissolution by divorce, then avers consultation with and engagement of an attorney in the city of Washington, District of Columbia, December, 1935, for the purpose of obtaining a divorce from Owen Redmond, and avers payment of \$150.00 to the attorney to procure the divorce, attaching a copy of the receipt from the attorney to the answer, which recites, "Received from Mrs. Sadie Redmond the sum of One Hundred and 50/100 on account professional services in obtaining divorce." But no record discloses any such divorce. The answer then avers that the attorney advised that no divorce was necessary because Owen Redmond had disappeared about December 31, 1917. It is interesting to note that the record discloses the same attorney, at about the same time, representing the decedent and Appellee. A mere coincidence, perhaps.

The District of Columbia Code of Laws (1940) Title 30, Sec. 101, unmistakably declares the marriage between the decedent and Appellee to be "absolutely void ab initio," and the court erred in holding to the contrary, thereby declaring Appellee surviving widow entitled to dower in decedent's estate.

CONCLUSION.

The action of the lower court creates an anomalous situation. The Appellant entered into a legal contract of marriage with the decedent herein, and in no way violated that contract of marriage. The decedent, as husband, by subterfuge, fraud and deceit, which the record and testimony clearly and unequivocally show, attempted to dissolve the marriage of the parties by securing a divorce in a foreign state, factually lacking jurisdiction, and subsequently entered into a second marriage contract and ceremony with the Appellee, who at the time had a legal husband, which in substance created a bigamous marriage. These being the uncontroverted facts according to the record and testimony, the Court decides the divorce decree "presumably valid," and "that the Appellee became the wife of the decedent on June 14, 1936, at Washington, District of Columbia," and "That by reason thereof was decedent's widow, entitled to dower," abrogating the clear and unequivocal right of the Appellant to claim and be entitled to dower in the decedent's estate.

It is respectfully submitted that the judgment of the lower court was erroneous and should be reversed.

Respectfully submitted,

STANLEY E. OTTO,

Attorney for Appellant.

1219 Good Hope Road, S. E.,

Washington, D. C.,

JOINT APPENDIX

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11148

MARY ELLA HARRIS, *Appellant*,

vs.

SADIE BEATRICE HARRIS, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

115 Filed October 11, 1948, Theodore Cogswell, Register
of Wills, D. C., Clerk of Probate Court.

Last Will and Testament of Joshua Harris

I, Joshua Harris, of the City of Washington, District
of Columbia * * *

First, * * *

Second, I give, devise and bequeath to my beloved sister,
Lillie Harris, now residing at 1833 Providence Street, N.E.,
Washington, D. C., all of my real, personal and mixed prop-
erty which I now have or may in the future acquire, and
wherever situate, to have and to hold the same absolutely
and in fee simple, subject only to the Dower right of my
wife, Sadie Beatrice Harris.

116 SIGNED, SEALED, PUBLISHED, AND DECLARED, by Josh-
ua Harris the above-named testator, as and for his
last Will and Testament, in our presence, and at his re-
quest, and in his presence, and in the presence of each
other, we have hereunto subscribed our names as attesting
witnesses.

MARION J. BROWN,
1833 Providence St., N.E.
TOM COLEMAN,
329 16th St., S.E.

117 Filed January 12, 1949, Theodore Cogswell, Register
of Wills, D. C., Clerk of Probate Court,

Petition for Probate of Will and for Letters Testamentary

The petition of Lillie Harris respectfully represents:

3. That said testator was survived by this petitioner,
his sister, Lillie Harris, an adult, who resides in the District
of Columbia; and, Mrs. Sarah Dunlap, a sister, an adult,
whose whereabouts and residence is and has been unknown
to this petitioner for a period of more than ten years, the
last known address was 1833 Providence Street, N.E., Wash-

ington, D. C.; and Mrs. Mary Ella Harris, an adult, who resides in the District of Columbia, at 316 E Street, S.W., Washington, D. C., who claims to be the legal widow of the testator, having purportedly married said testator, to wit, November 22, 1917, at Alexandria, Virginia, and further claims that the said marriage was never legally dissolved during the lifetime of the testator, though this petitioner has found, among the personal effects of the testator, a paper purporting to be a "Final Decree" of divorce granted in the case of Joshua Harris vs. Mary E.

118 Harris, in the Circuit Court of Fairfax County, Virginia, dated December 5, 1935, In Chancery; and Mrs. Sadie Beatrice Harris, an adult, who resides in the District of Columbia, at 131 C Street, S. W., Washington, D. C., who, also, claims to be the legal widow of the testator, having purportedly married said testator, to wit, June 14, 1936, at Washington, D. C.

4. At the time of his death, the testator was seized of the following real estate in the District of Columbia: Lot 7 in Square 4043, improved by premises 1833 Providence Street, N. E., Washington, D. C., which property petitioner estimates to be worth about \$5,000.00; that the said property is encumbered by a mortgage against same, held by Perpetual Building Association, of Washington, D. C., at the time of his death, in the amount of \$440.40, payable at the rate of \$11.00 per month until satisfied.

* * * * *

119 /s/ LILLIE HARRIS,
Petitioner.

/s/ STANLEY E. OTTO, *Attorney for Petitioner.*

120 Filed January 30, 1950, Theodore Cogswell, Register
of Wills, D. C., Clerk of Probate Court.

Petition for Letters of Administration d.b.n., c.t.a.

The petition of Stanley E. Otto respectfully represents:

* * * * *

3. That on or about the 25th day of January, 1950, Lillie Harris, the executrix appointed by said will of the deceased,

departed this life in the District of Columbia, and that by reason of the death of said executrix certain goods, chattels, personal property and real estate of said Joshua Harris, remains still to be administered and disposed of in accordance with the terms and provisions of said last will and testament, for which purpose it is necessary that letters of administration de bonis non, cum testamento annexo, do issue from this Honorable Court, conferring authority so as to administer such assets.

4. That the said deceased was survived at the time of his death, by his sister Lillie Harris, named executrix of his will, and now deceased, died intestate, and, Mrs. Sarah Dunlap, a sister, and adult, whose whereabouts and residence is and has been unknown for a period of more than ten years, the last known address was 1833 Providence Street, N.E., Washington, D. C.; and Mrs. Mary Ella Harris, an adult, who resides at 316 E Street, Washington, D. C., who claims to be the legal widow of the deceased, having purportedly married said Joshua Harris, deceased, to wit, November 22, 1917, at Alexandria, Virginia, and further claims that said marriage was never legally dissolved during the lifetime of the deceased, though this petitioner has found, among the personal effects of the deceased, a paper purporting to be a "Final Decree" of divorce granted in the case of Joshua Harris vs. Mary E. Harris, in the Circuit Court of

Fairfax County, Virginia, dated December 5, 1935,
 121 In Chancery; and Mrs. Sadie Beatrice Harris, an adult, who resides in the District of Columbia, at 131 C Street, S. W., Washington, D. C., who, also, claims to be the legal widow of the deceased, having purportedly married said deceased, to wit, June 14, 1936, at Washington, D. C.

122

STANLEY E. OTTO, *Petitioner.*

STANLEY E. OTTO,

Attorney for the Petition.

* * * * *

123 Filed August 18, 1950, Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.

Petition for Instructions

The petition of Stanley E. Otto respectfully shows to this Honorable Court:

2. That Joshua Harris died a resident of the District of Columbia, leaving a will dated June 16, 1948, which has been admitted to probate, and that the "Second" paragraph of said will is the following: "I give, devise and bequeath to my beloved Sister, Lillie Harris, now residing at 1833 Providence Street, N. E., Washington, D. C., all of my real, personal and mixed property, which I now have or may in the future acquire, and wherever situate, to have and to hold the same absolutely and in fee simple, subject only to the Dower right of my wife, Sadie Beatrice Harris."

3. Petitioner states that as appearing in paragraph Three (3) of the Petition for Probate of Will and for Letters Testamentary, as filed herein, the same being made a part hereof, and as appearing in paragraph Four (4) of the Petition for Letters of Administration, d.b.n., c.t.a., as filed herein, the same being made a part hereof, among other things, a report to this Court the respective claims of Mrs. Mary Ella Harris and Mrs. Sadie Beatrice Harris, respectively, as the legal widow of Joshua Harris, deceased.

4. That petitioner upon diligent search, inquiry and investigation of the respective claims of Mrs. Mary Ella Harris and Mrs. Sadie Beatrice Harris, submits the following:

(A) That Mrs. Mary Ella Harris, nee Mary Ella Brown, married Joshua Harris, deceased, to wit, November 22, 1917, at Alexandria, Virginia; that said Mrs. Mary Ella Harris denies that said marriage was ever legally dissolved during the life time of the deceased, Joshua Harris, though among the effects of the deceased a paper was found purporting to be a "Final Decree" of divorce granted in the case of Joshua Harris vs. Mary Ella Harris, in 124 the Circuit Court of Fairfax County, Virginia, dated December 5, 1936, In Chancery, with respect to this Mrs. Mary Ella Harris denies that she had any knowledge

whatsoever of any divorce action, as aforesaid, until, to wit, November, 1948, when she was at said time shown the paper "Final Decree," as aforesaid, by the petitioner, and further that to her knowledge and belief Joshua Harris, deceased, from the date of their marriage until his death, had been continuously, without interruption, a resident of the District of Columbia, and that she has continuously from the date of their marriage to the present held herself out as the wife and widow of Joshua Harris, deceased.

(B) That Mrs. Sadie Beatrice Harris married Joshua Harris, deceased, on, to wit, June 14, 1936, at Washington, D. C., that the marriage application and records show that Mrs. Sadie Beatrice Harris used the name of Sadie Beatrice Redmond, and her status to be "widow"; that also of record Mrs. Sadie Beatrice Harris, nee Sadie Beatrice Chambers, married Owen D. Redman on, to wit, August 15, 1913, at Washington, D. C., and that no record has been found indicating a divorce between the said parties, dissolving said marriage; that upon further search and inquiry the petitioner found according to the records of the District of Columbia Health Department, Bureau of Vital Statistics a Certificate of Death showing the date of death of Owen Redmond as, to wit, December 15, 1941; that Joshua Harris, deceased, and Mrs. Sadie Beatrice Harris subsequent to their marriage lived as husband and wife, and held themselves out as such, at 1833 Providence Street, N. E., Washington, D. C., until, to wit, July, 1947, at which time Mrs. Sadie Beatrice Harris deserted and abandoned Joshua Harris, deceased, and did not resume her relationship, as wife, with Joshua Harris, deceased, during the remainder of his life time.

(C) That Joshua Harris, deceased, had been continuously and without interruption lived at 1833 Providence Street, N.E., Washington, D. C. and had been a resident of the District of Columbia from, to wit, October, 1922 until his death, with the exception of the period he was taken to Bethesda Naval Hospital, Bethesda, Maryland, to wit, June 1948, where he remained until the date of his death, to wit,

September 24, 1948; That he was employed by the National Park Service, Interior Department, Washington, D. C., for approximately 25 years, and the records of National Park Service, Interior Dept., Washington, D. C., and United States Civil Service Commission, Washington, D. C., purportedly show the residence of Joshua Harris, deceased, from, to wit, the year 1922 until his death to be 1833 Providence Street, N. E., Washington, D. C.; that among the effects of Joshua Harris, deceased, was also found
 125 a paper (form) entitled "Designation of Beneficiary" addressed to United States Civil Service Commission, Washington, D. C., bearing the date of December 20, 1934, signed by Joshua Harris, deceased, and his signature witnessed as of said date in which it set forth his residence to be 1833 Providence Street, N. E., Washington, D. C., and the named beneficiary "Mary Ella Harris," relationship, "wife," the aforesaid date being less than one year before the date given in the "Final Decree" of divorce, to wit, December 5th, 1935; that living with Joshua Harris, deceased, continuously for the period from the year 1923 to the date of his death, at 1833 Providence Street, N. E., Washington, D. C., was Mrs. Marion J. Bailey, nee Marion J. Brown, she being generally known and accepted as his adopted daughter, though not legally a fact, and she avers that Joshua Harris, deceased, during the aforesaid period was a resident of and domiciled in the District of Columbia at the aforesaid address, and that he at no time had been away from his place of abode more than 24 hours at any one time, with the exception of the time he was taken to the Bethesda Naval Hospital, Bethesda, Maryland, to wit, June, 1948, where he was confined until his death, to wit, September 28, 1948, and further, to her knowledge, as a fact Joshua Harris, deceased, had at no time been domiciled in or a resident of the State of Virginia.

5. That the information and proof in the possession of the petitioner, or available to the petitioner, is neither conclusive nor satisfactory for a final determination by the petitioner as to who is the legal widow of Joshua Harris,

deceased, entitled to Dower, that by reason thereof the petitioner is unable to fulfill and complete his duties as administrator, d.b.n., c.t.a., and requires instructions from this Honorable Court, and requests of this Court that process may issue to the parties named herein, claiming to be the legal widow of Joshua, deceased, and entitled thereby to Dower, and a trial be had in this Court to determine the exigencies of this petition.

WHEREFORE, the premises considered, petitioner prays:

1. That the United States writ of subpoena issue from this Honorable Court to Mrs. Mary Ella Harris, residing at 316 E Street, S. W., Washington, D. C., and Mrs. Sadie Beatrice Harris, residing at 131 C Street, S. W., Washington, D. C., respectively, directing each of them to appear herein on a day certain and answer the exigencies of the Petition for Instructions.

* * * * *
126

STANLEY E. OTTO,
Petitioner.

* * * * *

127 Filed September 1, 1950, Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.

Answer of Mrs. Mary Ella Harris to Petition for Instructions

Comes now the respondent, Mrs. Mary Ella Harris, by her attorney, Stanley E. Otto, and for answer to Petition for Instructions, filed herein, states as follows:

1. That the allegations contained in paragraph one, two and three, respectively and inclusive, of the Petition filed herein are admitted.

2. That for answer to paragraph Four (4) sub section "A", the respondent admits the allegations contained therein, adding, that she at no time was served with process in the divorce action in the case of Joshua Harris vs. Mary Ella Harris, in the Circuit Court of Fairfax County, Virginia, in Chancery, and that from the date of her marriage to Joshua Harris until November 1948 she had no knowledge

or notice of the aforesaid alleged divorce action, and further avers that during the years of 1933, 1934 and 1935, respectively and inclusive, she had seen and talked personally with and to Joshua Harris within the District of Columbia, yet no mention of any divorce action was discussed by either or made known to her; that from the date of her marriage, aforesaid, there was never a suggestion, discussion, request or intimation, by either party, of and concerning a dissolution of their marriage by way of divorce or by any other means.

3. That for answer to paragraph Four (4), sub section "B", the respondent admits the allegations as to the "records" therein mentioned; that she neither admits nor denies the allegations therein contained as they relate to the association of Joshua Harris, deceased, and Mrs. Sadie Beatrice Harris; that for further answer she denies that Mrs. Sadie Beatrice Harris, formerly known as Mrs. Sadie Beatrice Redman, nee Sadie Beatrice Chambers, legally married Joshua Harris, deceased, or that the said Mrs. Sadie Beatrice Harris is the widow of Joshua Harris, deceased.

4. That for answer to paragraph Four (4), sub 127-A section "C", respondent admits the allegations contained therein.

5. That for answer to paragraph Five (5) respondent neither admits nor denies the allegations therein contained, but respondent states that by reason of the legal marriage of herself with Joshua Harris, deceased, and that there being no legal dissolution of said marriage during the life time of Joshua Harris, that respondent, Mrs. Mary Ella Harris, was during the life time of Joshua Harris, deceased, his legal wife and that by reason thereof respondent became and is the widow of Joshua Harris, deceased, and entitled to Dower, and all these recitals respondent is ready to prove, therefore she submits to and requests this Honorable Court that the administration, d.b.n., c.t.a., of the Estate of Joshua Harris, deceased, be instructed to acknowledge her as the wife and widow of said Joshua Harris, de-

ceased, and to acknowledge her claim to Dower, as her legal right.

MRS. MARY ELLA HARRIS.

STANLEY E. OTTO,

Attorney for Respondent.

128 Filed November 9, 1590, Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.

Answer to Petition for Instructions

* * * * *

4. In reply to Paragraph 4 of the petition herein, this respondent, upon information and belief, admits that the decedent herein and Mary Ella Brown were married on, to wit, November 22, 1917, at Alexandria, Va. * * * Respondent avers that prior to her marriage to the decedent herein, she was advised and believed and relied upon the validity of a final decree of divorce between the said Mary Ella Harris and Joshua Harris, the decedent herein, previously entered on, to wit, December 5, 1935, in the Circuit Court of Fairfax County, Virginia, a copy of which final decree is attached hereunto as respondent's Exhibit "A".

* * * * *

129 Respondent admits that she and the decedent were married on, to wit, June 14, 1936, in the City of Washington, District of Columbia, and admits that the marriage application and records characterize her as Sadie Beatrice Redmond and her status as that of a widow. Respondent further admits that, on to wit, August 15, 1913, respondent and one Owen D. Redmond were married at Washington, D. C., however, said respondent is without any knowledge as to whether or not there is any record of a divorce proceeding between herself and the said Owen D. Redmond. Respondent avers that, in order to be assured of her status as a single person, she did in or about December, 1935, engage an attorney in the City of Washington, District of Columbia, for the purpose of obtaining a divorce from Owen D. Redmond if the same was necessary. Respondent avers that she paid unto such attorney the sum

of One Hundred Fifty Dollars (\$150.00) for which she holds a receipt, a copy of which is hereunto attached as respondent's Exhibit "B" which recites that it is on account of professional services in obtaining a divorce and that she was thereafter advised by her attorney that, since she had not heard from her aforesaid husband, Owen D. Redmond, who had disappeared on, to wit, December 31, 1917, he was presumably dead and that accordingly respondent's status was that of a single person. Relying upon the representations of the attorney engaged by her, respondent herein accordingly presumed that she was either divorced or a single person and free to marry. In any event, and regardless of whether or not such was respondent's legal status, respondent admits that there is presently a record in the District of Columbia a death certificate indicating that said Owen D. Redmond died December 15, 1941, and thereafter respondent and the decedent herein continued to live together as husband and wife in the City of Washington, District of Columbia until July, 1947, at which time respondent and the decedent herein separated and continued thereafter to live separate and apart.

130 Respondent has no actual knowledge of the date upon which the decedent resided at 1833 Providence Street, Northeast, but is aware that said residence was continuously maintained by herself and the decedent from the date of their marriage until the date of their separation. Respondent is without any knowledge as to the contents of the records of the National Park Service or of the U. S. Civil Service Commission pertaining to the decedent's claimed residences nor of the designation of beneficiary formerly referred to in the petition herein. Respondent admits that during the period of her residence with the decedent the house 1833 Providence Street, Northeast, was also occupied by Marian J. Bailey who was accepted in the status of an adopted daughter by the decedent although no proceedings were ever taken to legalize any such status. Respondent is without any direct information as to places of abode which might have been maintained by the de-

cedent prior to the marriage of the decedent and respondent and accordingly can neither admit nor deny petitioner's allegation that the decedent was at no time domiciled in or a resident of the State of Virginia.

5. Respondent admits that the information and proof in the possession of the petitioner, or available to him, may be neither conclusive nor satisfactory for determination of the status of the legal widow of the decedent; however, respondent avers and claims that the decree of divorce heretofore referred to and granted to the decedent December 5th, 1935 was legal, valid and subsisting and that accordingly, until any further valid marriage was consummated by the decedent, decedent enjoyed the status of a single person. Respondent accordingly avers that, regardless of any misconception which might have pertained to her status from, to wit, June 14th, 1936 until, to wit, December 15th, 1941, nevertheless from December 15, 1941 until the date of decedent's death herein respondent was legally and lawfully the wife of the decedent since decedent's decree of divorce remained unimpeached during that period of time.

/s/ SADIE B. HARRIS.

* * * * *

/s/ SADIE B. HARRIS.

Sadie B. Harris.

* * * * *

By: /s/ HARRY L. RYAN, JR.

Attorneys for Sadie B. Harris.

EXHIBIT "A".

IN THE
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA
In Chancery —.

JOSHUA HARRIS, *Complainant*,

vs.

MARY E. HARRIS, *Defendant*.

Final Decree

This cause came on to be heard upon the bill of the complaint before Paul E. Brown, a Commissioner in Chancery, on the 27th day of September, 1935, after process was duly executed against the defendant a non resident of the state of Virginia; the defendant failing to appear, plead or demur; was argued by counsel.

It appearing to the court upon the report of the findings of Commissioner Paul E. Brown from the depositions of Joshua Harris, complainant, Joseph Green and Rosa Marshall taken before the said commissioner, at Fairfax, Virginia, that the complainant, Joshua Harris and the defendant, Mary E. Harris were married on to wit, the 22nd day of November, 1917 in the city of Alexandria, Virginia; and that the complainant has been an actual bona fide resident of the state of Virginia for more than one year prior to the filing of this suit and domiciled in Fairfax County; and that the said defendant has wilfully deserted the said complainant for more than two years continuously prior to the filing of this suit.

It is this 5th day of December, 1935, ORDERED, ADJUDGED AND DECREED, that the complainant be separated from the bonds of marriage with the defendant and that the said marriage be dissolved.

This decree shall not be final for the purpose of remarriage except between the parties to this suit until the expiration of six months from the date of this decree.

And nothing remaining to be done in this case, it is further ordered that the same shall be removed from the docket.

ENTERED IN 1935 CHANCERY ORDER BOOK, Page 161 and *Ex.*

133

EXHIBIT "B".

RUSSELL MORRIS

Attorney at Law

611 F Street, N. W.

Washington, D. C.

December 17, 1935.

Received from Mrs. Sadie Redmond the sum of One Hundred and 50/100 on account of professional services in obtaining divorce.

/s/ RUSSELL MORRIS,
Russell Morris.

\$150.00

Paid in full.

134 Filed February 28, 1951, Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.

Order Framing Issues

Upon consideration of the Petition for Instructions of Stanley E. Otto, Administrator d.b.n., c.t.a., filed herein, and the Answers to the petition, filed by Mrs. Mary Ella Harris and Mrs. Sadie Beatrice Harris, respectively, it is this 28th day of February, 1951,

ORDERED, That the issues hereinafter set out be and they are hereby framed to be tried in this Court, March 19, 1951.

1.

Was the above named Joshua Harris married to Mary Ella Harris in the City of Alexandria, State of Virginia, on or about November 27th, 1917?

2.

If said Joshua Harris and Mary Ella Harris were married in the City of Alexandria, State of Virginia, have they been lawfully divorced?

3.

Was the said Joshua Harris married to Sadie Beatrice Harris in the City of Washington, District of Columbia, on June 14th, 1936?

4.

Was the said Joshua Harris survived by Mary Ella Harris or Sadie Beatrice Harris as his widow?

CHARLES F. McLAUGHLIN,

CONSENTED TO:

Judge.

/s/ _____
 STANLEY E. OTTO,
 Administrator d.b.n., c.t.a.

/s/ _____
 HARRY L. RYAN,
 Attorney for Sadie Beatrice Harris.

/s/ _____
 STANLEY E. OTTO,
 Attorney for Mary Ella Harris.

135 Filed March 19, 1951, Theodore Cogswell, Register
 of Wills, D. C., Clerk of Probate Court.

Pretrial Proceedings

STATEMENT OF NATURE OF CASE:

Petition for instructions by administrator, CTA, in connection with the estate of Joshua Harris, deceased. The petition seeks a determination as to who was the legal wife of the decedent at the time of his death. Petition claims that Mary Ella was the wife of the decedent at the time of death in that there was no legal divorce between the decedent and the said Mary Ella in that the decedent at the time of the alleged divorce of Dec. 1935 in Fairfax, Va., was not in fact a resident of that state, and further, that the alleged decree was obtained by fraud and deceit.

Defendant claims that she, Sadie Beatrice, is the lawful wife of decedent; that she was married in June 1936 and lived in the Dist. of Col. with the decedent until shortly before his death. Defendant admits that Mary Ella was married to the decedent but claims that she was divorced by the decree of 1935 in Virginia. The said Sadie Beatrice further admits that her first husband did not die until Dec. 15, 1941, but claims that from that time on until July 1947 she, Sadie Beatrice lived with the decedent openly and notoriously in the Dist. of Col. up until July 1947 when they separated.

Plaintiff denies that Sadie Beatrice and the decedent separated but asserts that the said Sadie Beatrice deserted the decedent in July 1947.

136

STIPULATIONS:

* * * * *

IT IS STIPULATED THAT:

Mary Ella and decedent were married on Nov. 22, 1917, Sadie Beatrice and decedent married 6/14/36. Mary Ella and decedent divorced by decree of Va. Court, Dec. 5, 1935, first husband of Sadie Beatrice died Dec. 15, 1941. Official records relating to each of these stipulations to be received without formal proof subject to test of relevancy and materiality.

It is stipulated that the will of decedent may be received without formal proof subject to test of relevancy and materiality.

Counsel to exchange names and addresses of witnesses within one week.

* * * * *

Attorneys authorized to act:

STANLEY E. OTTO, *Attorney for Plaintiff and Mary Ella Harris.*

HARRY L. RYAN, *Attorney for Defendant.*

137 Filed May 7, 1951, Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court.

Order Instructing Administrator, D.B.N., C.T.A.

This matter coming before the Court upon the petition of Stanley E. Otto for instructions pertaining to the interests of certain parties in and to the estate of Joshua Harris, deceased, answers filed unto said petition by Mary Ella Harris and Sadie Beatrice Harris, respondents named therein, issues framed upon said petition and the answers filed thereunto, and all parties in interest having appeared in open court and the Court having received and considered such evidence as was deemed by the administrator, d.b.n., c.t.a. to have been relevant and pertinent herein, and the Court being of the opinion that the respondent, Mary Ella Harris, was aware of a decree of divorce dissolving her marriage unto the decedent herein within a relatively short period after the entry of the same, but that the said Mary Ella Harris took no affirmative steps to in any manner attack the same, either in this proceeding or otherwise, the Court therefore determines the issues framed herein as follows:

Issue No. 1. The decedent herein was married to Mary Ella Harris at Alexandria, Virginia, November 22, 1917.

Issue No. 2. A decree of divorce presumably valid was entered by the Circuit Court of Fairfax County, December 5, 1935, dissolving the marriage theretofore existing between the decedent herein and Mary Ella Harris.

Issue No. 3. The decedent herein became married to Sadie Beatrice Harris at Washington, District of Columbia, June 14, 1936.

138 *Issue No. 4.* The decedent herein was survived by Sadie Beatrice Harris as his widow.

It is therefore by this Court this 7th day of May, 1951.

ORDERED: That Stanley E. Otto, administrator, d.b.n., c.t.a., of the estate of Joshua Harris, deceased, be and he hereby is instructed that Sadie Beatrice Harris is the surviving widow of the decedent herein and that in the distribution of the decedent's estate said Sadie Beatrice Harris

shall be entitled to such share of decedent's estate as the law provides for distribution to a decedent's widow.

/s/ HENRY A. SCHWEINHOUT,
Judge.

* * * * *

175 Filed June 6, 1951, Theodore Cogswell, Register of
Wills, D. C., Clerk of Probate Court.

Notice of Appeal

Notice is hereby given this 6th day of June, 1951, that Mary Ella Harris, respondent, as appearing in the Petition for Instructions, filed herein, August 18th, 1950, by Stanley E. Otto, Administrator d.b.n., c.t.a., hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 7th day of May, 1951 in favor of Sadie Beatrice Harris, respondent, against said Mary Ella Harris, respondent—ORDERED; That Stanley E. Otto; administrator, d.b.n., c.t.a., of the Estate of Joshua Harris, deceased, be and he hereby is instructed that Sadie Beatrice Harris is the surviving widow of the decedent herein and that the distribution of the decedent's estate said Sadie Beatrice Harris shall be entitled to such share of the decedent's estate as the Law provided for distribution to a decedent's widow.

STANLEY E. OTTO,
*Attorney for Mary Ella
Harris, respondent.*

* * * * *

139

Exhibit No. 1.

UNITED STATES CIVIL SERVICE COMMISSION

* * * * *

Application for Entry on Reemployment List

* * * * *

Name—Joshua Harris

Post office address—1833 Providence Street, NE

140 Application as to Martial Status of Applicant as to
Members of Family in the Government Service of
the United States or the District of Columbia.

* * * * *

1. Name of Affiant—Joshua Harris

2. At what address are you living? 1833 Providence Street,
NE

* * * * *

6. If married, are living with your husband (or wife)?
Yes.

* * * * *

I, the undersigned, do solemnly swear * * *

Signature of Affiant—Joshua Harris

Subscribed and duly sworn * * * this 21st day of January
1935 * * *

Signature of Officer—Melvin C. Riesner

Official Title—N. P.

(Official Impression Seal)

141 **Exhibit No. 2.**

Designation of Beneficiary

To the United States Civil Service Commission, Washing-
ton, D. C.

I, Joshua Harris * * *

Name of Beneficiary—Mary Ella Harris, Wife

* * * * *

Address—1833 Providence Street, N.E., Washington, D. C.

* * * * *

Joshua Harris

1833 Providence Street, NE

Washington, D. C.

Certificate of United States Government Official

* * * * *

Dated at Washington, D. C. this 20th day of December, 1934.

(S) W. H. Ireland

Group Superintendent, National Park
Service, Interior Department

* * * * *

145

Exhibit No. 3.

Transcript of Record, In re Joshua Harris v. Mary
E. Harris in the Circuit Court of Fairfax Coun-
ty, Virginia.

* * * * *

FAIRFAX COUNTY, To-wit:

The Commonwealth of Virginia,

To the Sheriff of Fairfax County,—Greeting:

You are hereby commanded to summon MARY E. HARRIS, Defendant, if found in your bailiwick, to appear at the Clerk's Office of the Circuit Court of the County of Fairfax, Virginia, at Rules to be held for the said Court on the FIRST Monday in AUGUST, 1935, to answer a bill in chancery exhibited against her in said Court by JOSHUA HARRIS, Complainant, and have then there this writ and show how you have executed the same.

WITNESS, F. W. RICHARDSON, Clerk of our said Court, at the Court House of said County, this 17th day of July, 1935, and in the 160th year of the Commonwealth.

F. W. RICHARDSON, *Clerk*

By: /s/ JOHN M. WHALEN, *Deputy Clerk*

MEMORANDUM: The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant by the complainant on the grounds of wilful abandonment for a period of more than two years prior to the filing of this suit, and for general relief.

Teste:

F. W. RICHARDSON, *Clerk,*

By: /s/ JOHN M. WHALEN, *Deputy Clerk.*

164 *Affidavit of Service on Non-Resident Defendant*

"DISTRICT OF COLUMBIA ss:

"I, Herbert Marbury, an adult, being first duly sworn according to law, depose and say that I live at 102 Virginia Avenue, Southwest, Washington, District of Columbia, and that I am not a party to or otherwise interested in the subject matter of the controversy.

"Affiant further avers he served personally a copy of the subpoena in the above-entitled cause on the above Mary E. Harris, a non-resident of the State of Virginia at number 233 Virginia Avenue, Southwest, Washington, District of Columbia, on the 23rd day of July, 1935, in the hallway of her home at the above said address."

The signature is subscribed, "Herbert Marbury, affiant.

"Subscribed and sworn to before me this 31st day of July, 1935.

"Geo. C. Scurlock

"Notary Public, D. C.

"My commission expires on the 13 day of Dec., 1935."

(Continued by adding pages 165-166 attached hereto)

* * * * *

172

Exhibit No. 4.

Marriage License

* * * * *

Joshua Harris of Washington, D. C.

Sadie Beatrice Redmond of Washington, D. C.

* * * * *

Return

* * * * *

I solemnized the marriage of Joshua Harris and Sadie Beatrice Redmond, named herein, on the 14th day of June, 1936 * * *

Rev. B. H. Whiting

* * * * *

173

Exhibit No. 5.

Marriage License

* * * * *

Owen Redmond of Washington, D. C.

Sadie Beatrice Chambers of Washington, D. C.

* * * * *

Return

I, Rev. John Richard * * *

I solemnized the marriage of Owen Redmond and Sadie B. Chambers * * * on the 25th day of August, 1913 * * *

Rev. John Richard

* * * * *

174

Exhibit No. 6.*Certificate of Death*

District of Columbia Health Department, Bureau of Vital Statistics

* * * * *

Medical Certification

2. Usual Residence of Deceased.

(a) State D. C. (b) * * *

(c) City or Town Washington

* * * * *

3. (a) Full name (Print) Owen Redmond

* * * * *

6. (a) Single, married, widowed or divorced. Ans. Divorced.

20. Date of Death (Month) 12 (Day) 15 (Year) 1941.

* * * * *

165

IN THE

CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

In Chancery

JOSHUA HARRIS, *Complainant*,

vs.

MARY E. HARRIS, *Defendant*.

Commissioner's Report

The undersigned Commissioner in Chancery of this Court to whom the above-entitled cause was by a decree entered

therein at the September Term, 1935, referred to take testimony and report his findings to the Court reports as follows:

The depositions of Joshua Harris and others were duly taken before your commissioner and are used in making this report. In addition to these depositions your Commissioner has made a personal investigation in the neighborhood of the place where the Complainant testified he was residing, to wit: Falls Church, Virginia, and is satisfied from his investigation and from said depositions that the Complainant is an actual bona fide resident of and domiciled in the County of Fairfax, Virginia, and that he has been an actual, bona fide resident of and domiciled in the State of Virginia for at least one year prior to the institution of this suit.

In the opinion of your Commissioner the above-entitled depositions fully sustain the allegations of the Bill of Complaint as to the desertion of the Complainant by the Defendant and your Commissioner therefore reports as follows:

That this Court has jurisdiction to hear and determine the cause under the provisions of Section 5105 of the Code of Virginia as amended, and that a Decree should be entered herein, granting the Complainant a divorce A Vinculo Matrimonii from the said Defendant upon the grounds of willful desertion and abandonment without justification, cause or excuse for more than the required statutory period of two years.

166 The Complainant and his counsel were duly notified of the time and place of making this report and were present at the execution of the same. The Defendant is a non-resident of the State of Virginia, residing in Washington, D. C., and a copy of the summons in this cause

was served personally as will appear from the certificate filed with the papers in this cause, and no further notice was necessary as to her.

Respectfully submitted,

/s/ Paul E. Brown

Commissioner in Chancery as
aforesaid

, * * * * *

Transcript of Proceedings

3 Mr. Otto: The subject matter is a petition for instructions filed by the administrator d.b.n., c.t.a.

The Court: That is you, isn't it?

Mr. Otto: That is me. In this respect, though, Mrs. Mary Ella Harris and Mrs. Sadie Beatrice Harris each claimed to be the legal widow of the deceased, Joshua Harris.

The Court: Legal wife?

Mr. Otto: That is correct, Your Honor. There was a pretrial of this case, at which time the issue was resolved in this respect, that the only issue is whether or not a divorce granted to Joshua Harris December 5, 1935, in the State of Virginia was or was not legal.

The Court: Do you agree, Mr. Ryan, that is the only issue in the case?

Mr. Ryan: If Your Honor please, I agree that is the only factual issue, but I feel there are other deeper issues concerned, in regard, primarily, as to whether or not the Probate Court has the right to try this kind of case.

The Court: I was going to come to that. That flows from the factual issue. The factual issue is what, Mr. Otto?

Mr. Otto: That is the situation.

The Court: Don't we meet at the threshold of the case the question of whether or not the Virginia divorce
4 decree can be collaterally attacked in this kind of proceeding?

Mr. Otto: I believe it can be, Your Honor.

The Court: That, it would seem to me, would be number one for consideration, because if the Court should hold,

this Court should hold it cannot be collaterally attacked, then there is no point in going into a lot of evidence.

Mr. Otto: That is quite true.

The Court: If it should hold it can be, then, of course, the case proceeds.

What would you say to the suggestion we first discuss that legal question, assuming the factual situation as you apparently contend it to be? Assume arguendo that is the situation. Can it be collaterally attacked?

Has this Court got a right to deny full faith and credit to the Virginia decree?

I read this, frankly, not carefully, because I didn't have time to this noon, and that immediately occurred to me as a question which would have to be solved, either now or some time during the course or at the end of the trial.

Now, I notice the copy of the judgment which is appended as an exhibit to Mr. Ryan's answer to your petition papers says that service was made. Where was service made in the divorce case? Was it Fairfax?

Mr. Otto: Yes, Your Honor.

5 The Court: Whether or not service was made, it would seem to me is a very important issue. If it was not, we might have an entirely different legal aspect of the situation. If service was made and the first wife went in and contested, or didn't, then we have the legal question in a different context. What is the fact of the matter? Do either of you know? Was she served, did she appear, and so on? That, I would assume, would be of record in Virginia, but I did not see in the file.

Mr. Ryan: I intend to prove personal service, if Your Honor please, as indicated by the records of the Fairfax County Court on the first widow, July 23, 1935, at her residence in Washington, D. C.

The Court: She was personally served?

Mr. Ryan: Personally served with process.

The Court: Did she appear.

Mr. Ryan: She did not appear.

The Court: Did not contest, did not appear and did not contest it in any manner?

Mr. Ryan: No, sir.

The Court: Do you agree that is the case?

Mr. Otto: That is correct, substantially, with this exception, that the first wife denies that she was served. Secondly, that she was served—if she was, it was a constructive service in the District of Columbia.

6 The Court: Substitute service?

Mr. Otto: Substitute service.

The Court: Not by publication?

Mr. Otto: Not by publication, no.

The Court: How was she served?

Mr. Ryan: I have the return of process served, indicating this under oath.

The Court: Read it.

* * * * *

8 The Court: And you say you want to dispute or contest the assertion that she was served?

Mr. Otto: That is true, Your Honor.

The Court: That, certainly, you can do.

Mr. Otto: And, as a matter of fact, I submit for the consideration of the Court, that even if there were service in the District of Columbia pertaining to a divorce in the State of Virginia, the primary consideration is whether or not the plaintiff in that divorce action was a bona fide resident of the State of Virginia. If he was not, then the Court had no jurisdiction at any time to grant a divorce to Joshua Harris.

* * * * *

11 "The proper way to have protested that would have been for a woman claiming to be the wife to have either done one of two things, renounce the will, and claim her dower interest in her deceased husband's estate, or to have filed a caveat to her alleged deceased husband's will. She hasn't done either of those, so the Probate Court's hands, as I view it, are tied, unless within the statutory period she wanted to attack the divorce, and then had filed

an equity action, which she has not done."

Mr. Ryan: This Court, District of Columbia. I think she could have collaterally attacked it in another branch of this Court, not the probate branch.

The Court: Did you raise the question you now speak of at the pretrial?

Mr. Ryan: The only issues raised at the pretrial were the factual issues.

The Court: What you are really saying to me now is I ought to dismiss the petition of the administrator?

Mr. Ryan: That is correct.

The Court: But you didn't raise it at pretrial?

Mr. Ryan: I didn't raise at pretrial that question, * * *

* * * * *

12 "Mr. Ryan: Mary Ella hasn't asked for any relief in here. She is a respondent, the same as we are. It just occurred to me perhaps this Court was without jurisdiction, and therefore I felt compelled to bring it to the attention of the Court, even though it was not discussed at the pretrial."

Mr. Otto: May I call the attention of the Court to the will itself, because it specifically shows the purpose and intention?

* * * * *

Mr. Otto: The will of Joshua Harris, in which it is definitely contended by the administrator d.b.n. that it is clear as to the intention of the testator as to how his property shall be distributed.

In substance, Your Honor, the first part of the will, the first paragraph of it sets forth, or, rather, the second
13 part, "I give, devise and bequeath to my beloved sister, Lillie Harris, now residing at 1833 Providence Street, Northeast, Washington, D. C., all of my real, personal and mixed property, which I now have or may in the future acquire, and wherever situate, to have and to hold the same absolutely and in fee simple, subject only to the dower right of my wife, Sadie Beatrice Harris."

I submit that in order to carry out the purpose and intention of the testator, that there must be a dower right established in some person who is the legal wife or the legal widow of the deceased, and the purpose and intention, I submit, is widely known to be the law to govern such situations. Certainly Beatrice Harris, according to the contention and proof we will submit here could not possibly have been the widow entitled to dower.

* * * * *

14 The Court: Was Mary Ella ever cited in the probate case?

Mr. Otto: Personally.

The Court: Was she served with notice in the probate matter?

Mr. Otto: Yes, she was.

The Court: She never took any steps at all?

Mr. Otto: Neither of them did.

The Court: Neither one of whom?

Mr. Otto: Neither Mary Ella or Sadie Beatrice. They were both cited.

The Court: There would be no reason for Sadie to do it. Apparently she is content with the dower right.

Mr. Otto: I submit, Your Honor, according to the will itself there must be established a dower right, because this whole will, the property that Joshua Harris had, distinctly says it will only be subject to the dower right of my wife, Sadie Beatrice Harris. It has got to be a legal marriage if there is to be a dower right.

The Court: Let me ask you this.

If this Court has jurisdiction to review the Virginia's Court's action, and should conclude that the Virginia Court did not have jurisdiction, then, notwithstanding the
15 fact that Joshua named Sadie as the one who should have the dower right, she wouldn't get it, but Mary Ella would. I suppose there is no doubt about that, and but for the dower, he will have died intestate.

* * * * *

William H. Miller, * * *

* * * * *

Direct Examination

By Mr. Otto:

16 Q. In what branch of the Government are you employed?

The Court: General Services Administration.

By Mr. Otto:

Q. General Services Administration? What are your duties, sir? A. I am Chief of the Processing and Records Branch, Personnel Division.

Q. Do you have those records with you? A. I do.

* * * * *

17 The Court: Have you examined that file?

The Witness: Yes, sir.

* * * * *

The Witness: Mr. Harris worked for the General Services Administration, Public Buildings Service.

* * * * *

The Court: Take up from where Harris first moved into any appointment reflected in any of your records, when was it, and for whom, and carry on through to death or retirement, or whatever it is.

The Witness: The records show he was employed by the same organization from June 25, 1917, until the date of his death, September 24, 1948.

18 The Court: Do your records show where he worked, that is to say, whether it was in the District of Columbia or not?

The Witness: At the time of his death, he was in the District of Columbia. On August 1, 1942, he was in the District of Columbia. Prior to that he was in Virginia.

The Court: Prior to when?

The Witness: Prior to October 1.

The Court: What year?

The Witness: I have records here. I misquoted them.
Prior to August 1, 1942.

* * * * *

19 By Mr. Otto:

Q. Do you have in your records a paper dated January 15, notarized January 21, 1935? A. Yes, sir.

Q. Concerning Joshua Harris? A. Yes, sir.

Q. Will you produce that record, please? A. (Witness complies.)

Mr. Otto: Will you mark this for identification?

(The document referred to was marked Plaintiffs' Exhibit No. 1 for identification.)

By Mr. Otto:

Q. Mr. Miller, will you state to the Court what this paper is? A. It is an "Application for entry on re-employment list," page 1, and the second page, "Affidavit as to marital status of applicants and as to members of family in the Government service of the United States or the District of Columbia."

Mr. Otto: I wish to have this record in evidence.

Mr. Ryan: I object to it, if Your Honor please.

20 The Court: On what ground?

Mr. Ryan: On the ground the information contained on it hasn't been identified as either having been provided by or in the handwriting of this deceased. I would like to question this witness on it.

The Court: You may.

Mr. Ryan: Sir, was that document which you have produced prepared by you?

The Witness: No, sir, it was not.

Mr. Ryan: Can you tell us whether or not the handwriting which is filled in on the blanks on that paper is of the decedent in this case, Joshua Harris?

The Witness: No, sir, I cannot.

Mr. Ryan: Do you know who prepared that paper, whose handwriting it is?

The Witness: This paper was prepared prior to the time I entered the Government service.

The Court: By whom?

The Witness: Prior to the time I entered the Government service. I don't know who completed the form.

Mr. Ryan: And you do not know who provided the information which went into those blanks which are filled in in regard to those questions about which you have answered?

The Witness: I have no personal knowledge.

Mr. Ryan: I object to it, if Your Honor please.

* * * * *

21 The Court: I will receive it in evidence.
(Plaintiff's Exhibit No. 1 for identification was received in evidence.)

* * * * *

22 Let the record show in the opinion of the Court the signature on the affidavit produced by the witness appears to be the same handwriting and the same signature as that which appears upon the photostatic copy of the will.

* * * * *

The Court: Proceed, Mr. Otto.

You desire to introduce that in evidence and since you want to leave it here in court, you get a photostatic copy made.

* * * * *

23 *Cross Examination*

By Mr. Ryan:

24 Q. Do I understand you to say you have no records prior to July 1, 1936, for the employment of Mr. Harris? A. No, sir, I didn't say that.

Q. Do you have records prior to July 1, 1936, for his employment? A. My records start on June 21, 1923.

Q. June 21, 1923? A. Yes, sir.

* * * * *

25 Q. Mr. Miller, do your records other than those which you have identified here and from which you have already testified establish any other residence on any other occasion during the period of employment with your departments? A. One other address is indicated in the file here. I am pretty certain it was 141 Providence Street, Northeast, Washington, D. C. I have a specification of change of address signed by Mr. Harris dated April 1, 1929, that his address has been changed to 1833 Providence Street, Northeast, Washington, D. C., effective April 1, 1929.

Q. Mr. Harris was required, was he not, to provide your department or the record section with any change of address that might have occurred? A. It is a requirement, but it is not enforced.

Q. Not enforced? A. No, sir.

Q. Then it would have been possible, would it, that
26 when the record which you have produced here dated January 19, 1936, was filled out, it could have been merely filled out by some supervisory employee from information that was already in your file? A. If it was filled out by some supervisor it was verified word by word with Mr. Harris prior to his signature. That is the procedure, and it must have been.

Q. It could, though, however, have been prepared by a supervisor? A. It is possible, yes.

Q. And if the supervisor had not followed his instructions it could have still been executed by Joshua Harris without having been read by him line by line, could it not? A. It is a possibility.

Q. And the information which appears on it, by the same token could have been taken from your records as they then existed, could it not? A. Some of the information. Other parts of the information could not.

Q. Is there anything on your records that would indicate 1833 Providence Street was obtained by oral statement of that address to the person filling this form out for Mr.

Harris, or it could come from a folder? A. We had copies of letters in the files which were addressed to Mr. Harris, addressed to 1833 Providence Street, Northeast.

27 They were not returned.

Q. They would not have been returned had he given the post office a change of address? They would have been forwarded from there, wouldn't they? A. Not so long as someone at the address would accept them, I guess.

Q. You say those records, then, cover Mr. Harris from then until the time of his death? A. The records start June 21, 1923, and go through the date of his death.

* * * * *

28 **Max Bergman** * * *

* * * * *

Direct Examination

By Mr. Otto:

* * * * *

Q. Are you here as a result of a subpoena issued to the President of the United States, Civil Service Commission, or his representative? A. Yes, sir.

Q. In that subpoena were you ordered to bring records concerning Joshua Harris- A. Yes, sir.

Q. Do you have those records with you? A. I do.

29 Q. I particularly call your attention to a paper dated December 20, 1934. Do you have that in your record? A. When you say date, what are you referring to?

Q. Referring to a designation of beneficiary. A. Yes, sir.

Q. May I have it, please?

Mr. Otto: May I have this marked for identification?

* * * * *

Mr. Otto: I wish to offer this paper known as a Designation of Beneficiary into evidence, Your Honor.

The Court: Any objection?

Mr. Ryan: The only objection, I think it is immaterial. It antedates the date of the supposed divorce. It is dated December, 1934.

The Court: What is your position?

Mr. Otto: The purpose of offering that, Your Honor, is simply this: In order to procure a divorce in the
30 State of Virginia a resident must be there for one year, and this paper will show he was not a resident even during the year.

The Court: What do you say to that? When did he get the divorce?

Mr. Ryan: December 5, 1935.

Mr. Otto: December 5. This paper is dated December 20, 1934.

Mr. Ryan It doesn't purport to have an address on it.

Mr. Otto: Oh, yes, it does.

Mr. Ryan: It purports to have the address of the beneficiary.

The Court: It has got the address. It is apparently signed—again it looks like the same signature, and typed under it is his Washington, D. C., address. It will be received. Let us have a copy tomorrow.

(The Designation of Beneficiary was marked and received in evidence as Plaintiff's Exhibit 2.)

By Mr. Otto:

* * * * *

31 Q. Mr. Bergman, during this entire period insofar as your records are concerned, what was the address or residence of Joshua Harris as the records show it?

A. The first indication from a review of the file of his home address appears in this designation dated in 1934, and it shows his home address as 1833 Providence Street, Northeast, and then I have the application for disability retirement that he executed on July 8, 1948 and it shows the address as 1833 Providence Street, Northwest.

Q. Northwest? A. It is typed Northwest.

The Court: Is it typed Northwest?

The Witness: Yes, sir.

By Mr. Otto:

Q. So that your records show only one address for Joshua Harris, that being 1833 Providence Street, Northeast? A. Yes, sir.

* * * * *

Cross Examination

By Mr. Ryan:

Q. Were any of those records which you have available indicating Mr. Joshua Harris' address prepared by him, Mr. Bergman? A. Well, the designation in 1934 is typewritten, and all we have is the signature, with the
32 name of Joshua Harris. Do you want me to tell you the usual procedure?

Q. I am not concerned, Mr. Bergman, with the usual procedure. I would rather know what happened in the case we are concerned with.

The Court: Apparently you don't have anything in handwriting which gives that address?

The Witness: No, sir.

The Court: All right.

By Mr. Ryan:

Q. I would like this much of your usual procedure. Is that paper you have produced here prepared in your office and mailed to the employee, or is the employee called in and interrogated concerning the information which is subsequently typed upon that paper? A. The employee voluntarily appears at our office if he wishes to execute the designation form and the 1934 designation shows he appeared before an official of the National Park Service and signed the designation.

Q. Is there any indication as to whether that designation was prepared on that date or whether it was prepared at some prior date, and the man then— A. It has to be pre-

pared the same date, according to the certificate of the United States Government official who certifies that the person above named is known to him as an employee of the United States Government and that he is personally well acquainted with him, has been acquainted with him for—in this particular designation it shows six years, and that he subscribed to the above designation in his presence and declared it to be his free act and deed.

Q. Any indication on there that the contents are sworn to or affirmed by the Civil Service employee? A. Are you referring to under oath?

Q. Yes, sir. Was the employee under oath for the information that is on there? A. No, sir. That is not a requirement for designation of beneficiary.

* * * * *

37 Mr. Otto: Will you take the stand, Mrs. Mary Ella Harris.

Mr. Ryan: May I inquire for the purpose of the record what the nature of counsel's examination of this witness is going to be, whether it is as her counsel, as a respondent in this case, or is it on behalf of his petition for instructions, because he is both party and counsel?

The Court: Well, I suppose I can answer that for him. Of necessity it has got to be both.

It seems to me someone should have taken you out of this position you have gotten yourself into, Mr. Otto. You shouldn't be representing Mrs. Harris in an adversary proceeding and at once being the administrator asking for instructions. You are asking for instructions as the administrator, and as attorney for this present witness you are asking the Court to tell you exactly what your instructions ought to be, and I don't think you ought to be in that position, but no one has taken you out up to now, and I

am not going to take you out, so my answer for Mr. Otto is he is acting in both capacities.

Mr. Ryan: I just wanted to know so the record would show what the status in regard to her answers.

* * * * *

Mary Ella Harris * * *

* * * * *

Direct Examination

By Mr. Otto:

Q. State your full name and address. A. Mary
39 E. Harris, 316 E Street, Southwest, Washington,
D. C.

Q. Did there come a time you married Joshua Harris?
A. Yes.

Q. Did there come a time you married Joshua Harris?
A. Yes, there was.

Q. When was that, and where? A. November 22nd, 1913,
in Alexandria, Virginia.

Q. After the marriage ceremony, where did you and
Joshua Harris take up your residence? A. 235 Virginia
Avenue, Southwest.

Q. Washington, D. C.? A. Washington, D. C.

Q. And you and Joshua Harris lived at that address
until what time? A. October, 1922.

Q. Will you tell the Court what happened during the
month of October, 1922? A. During the month of October,
1922, Joshua Harris left me on a Sunday. He taken his
clothes away from me and went to his mother's house at
141 Providence Street, Northwest, known as 1833 Provi-
dence Street.

The Court: Now?

The Witness: Now.

The Court: That used to be 141?

* * * * *

41 The Court: I think I will let her answer.

Read the question, Miss Powell.

(The pending question was read by the reporter.)

By Mr. Otto:

Q. Mrs. Harris, when was the first time that you learned that Joshua Harris had been granted a divorce? A. In November, 1948, in your office.

The Court: "In your office" meaning Mr. Otto's office?

The Witness: Yes.

By Mr. Otto:

Q. Mrs. Harris, you at no time prior to that time, that date, ever knew or had any knowledge of a divorce granted to Joshua Harris? A. I certainly did not.

Q. And to your knowledge from the time that Joshua Harris and you separated, where did Joshua Harris live?

A. At 141 Providence Street, known as 1833 Providence Street, Northeast.

Q. To your knowledge did Joshua Harris ever take up a residence or live in the State of Virginia? A. Never in his life.

Mr. Otto: That is all, Your Honor.

The Court: Before you start, Mr. Ryan, let me ask a question.

42 He left you, you say, in 1922?

The Witness: Yes, sir.

The Court: How did you know where he lived after that?

The Witness: Because I found out. I knew he went to his mother's house, because he told me.

The Court: When he left you, he went to his mother's house?

The Witness: Yes.

The Court: Were you in touch with him all along?

The Witness: I certainly was.

The Court: How?

The Witness: Of course I would see him going to and fro and around there close enough to know just where he

was, and I could put my hands on him if I wanted to, at any place I wanted to find him, I could find him.

Cross Examination

By Mr. Ryan:

Q. How many times did you put your hands on him to find him? A. Well, been quite a few, if I had of wanted to.

Q. Not if you wanted to. How many times were you in personal contact with your former husband, Joshua Harris, from 1922 when he left you and September, 1948, when he died? A. Plenty of times.

* * * * *

43 Q. How many times were you in his house between 1922 and 1948?

* * * * *

A. Oh, not too many times.

Q. Were you in there at all? A. Yes, I was.

Q. When? A. I was in there in 1931.

Q. In 1931? A. Yes, sir.

* * * * *

44 Q. All right. That is 1931. When were you in his house again, next? A. When he died.

Q. You were not in his house, then, from 1931 until 1948? A. That is right.

* * * * *

Q. He owned that house, didn't he? A. Yes, his mother gave it to him before she died.

* * * * *

Q. He left you on a Sunday? A. October, 1922.

* * * * *

45 Q. And what kind of shifts did he work? Did he always work at the same time? A. No, they changed shifts, day and night. Of course he would have—you know, they go from 8 to 4, and from 4 to 12, midnight,

46 and sometimes they change three times. It depends, 8 to 4, and 4 to 12, and from 12 to 8 the next morning.

Q. What kind of shift did you work? A. Eight to four.

Q. You always worked the same one? A. Yes, sir.

* * * * *

47 Q. You continued to live at—what was it—233 Virginia Avenue? A. That is right.

Q. Southwest, all during that time? A. I lived there from that time up until 1939.

Q. Were you living there in July, 1935? A. I was.

Q. Do you know a Mr. Herbert Marbury? A. No, I don't.

Q. How far is 233 Virginia Avenue, Southwest, from 102 Virginia Avenue, Southwest? A. A block, one block.

Q. Directing your attention to July 23, 1935, were you in the City of Washington at that time? A. As far as I know, I was.

Q. You lived here in this city? A. Yes.

Q. And you did know Herbert Marbury? A. I certainly did not.

48 Q. On July 23, 1935, did anyone come to your house on Virginia Avenue, Southwest, to give you any papers? A. I can't recall, not one soul.

Q. I want a more definite answer than that, if you can give it. You don't recall whether anybody gave you any papers? A. Nobody gave me any papers.

Q. And you never had any papers served on you of any kind or nature? A. No, sir.

Q. Whatsoever? A. I certainly have not. I can't recall nobody handing me no papers, only Mr. Otto, as I remember in his office, as I told you.

Q. If somebody handed you a paper, you certainly would recall it? A. I certainly would.

Q. Do you read and write? A. I certainly do.

Q. If somebody handed you a paper that had Joshua Harris' name on it, you would have known it, wouldn't you? A. I certainly would.

Q. You are definitely certain, you are testifying here on oath, that you were not served with any papers on the

49 23rd of July, 1935? A. No papers, no, sir. I don't know of nobody handed me no papers in 1935.

Q. Nobody handed you papers of any kind? A. I don't know. Somebody might have handed me some kind of papers, but nothing concerning Joshua Harris.

* * * * *

Q. Didn't you know in 1935 that Joshua had filed a suit in Fairfax? A. I did not.

Q. Charging you with desertion? A. Me with desertion?

Q. Yes, ma'am. A. Could it be I could be charged with desertion when he left?

50 Q. Pardon? A. Could it be he could charge me with desertion and he left me?

Q. It could be, yes. I asked you didn't you know he had filed those papers, and charged you with that? A. No, I did not.

Q. You knew a short while after 1935 that Joshua had remarried, didn't you? A. You hear a lot of things, but I didn't have anything to show me whether or not he had, because I had never saw any divorce from him. We hear lots of things in life that don't have to be true.

Q. You heard he had a divorce? A. No, I did not hear anything about a divorce.

Q. You heard he remarried? A. Oh, yes.

Q. When did you first hear he had remarried? A. I don't know. I couldn't tell you that.

Q. Could you fix even the year when you first heard he had remarried? A. No, sir. I don't know.

Q. Pardon? A. I really can't recall just about when it was.

Q. You kept seeing him, did you? A. That is right.

51 Q. Did you ever ask him if he was remarried? A. No, I never asked him nothing about that. I certainly didn't.

Q. Who did you hear he had remarried? A. Sadie Redmond.

Q. Did you know Sadie Redmond before 1935? A. I did.

Q. You knew that Sadie Redmond and your husband Joshua had been keeping company for a little while prior to then, didn't you? A. I had never seen them together in the history of my life.

Q. Never seen them together in the District? A. I have not, never. No, sir. That was one of the things I was waiting for. I have never seen them together.

* * * * *

52 Q. Didn't you ever discuss this remarriage with any of the other members of your family? A. No.

Q. Did you have any conversations with him about it? A. No, I didn't.

Q. Did you go to the District Attorney's Office about him marrying without getting a divorce from you? A. No, I didn't go. I didn't bother him one way or the other. I really didn't.

Q. Is it your testimony, Mary Ella, that from 1922 when he left you—A. That is right.

53 Q. Until he died in 1948 that you did nothing at all to concern yourself in any manner, shape or form about him being away from you? A. No, I certainly didn't bother him, no.

Q. Did you do anything? A. No.

The Court: Why didn't you try to get a divorce from him?

The Witness: Well, I never thought about it. I was getting along all right.

The Court: Just didn't bother with it? He never gave you any support, did he?

The Witness: No, I had been able to work and take care of myself all of the years.

The Court: Did you know a lawyer named Russell Morris?

The Witness: No, I don't.

* * * * *

The Court: All right. Let me ask you something else. Did you ever hear he was living over in Fairfax County?

The Witness: No, sir.

54 The Court: Anandale Heights?

The Witness: No, sir, I did not.

The Court: In a rooming house run by a woman named Marshall?

The Witness: No, sir, I did not.

By Mr. Ryan

Q. Do you know Rosa Marshall? A. No, I don't.

Q. Do you know Joseph Green? A. Joseph Green?

Q. Yes, Joseph Green. A. I know one Joseph Green.

Q. Is he dead or alive now? A. I think he is dead.

Q. Where did he live? A. Down in Southwest, on Third Street.

Q. On Third Street? A. That is right.

Q. Do you know whether or not Joshua knew Joseph Green? A. I think he did.

Q. Used to go around together some, didn't they? A. Well, I don't know about going around, but I think years ago they used to work together. I never knowed them to go no particular places.

Q. Was Joseph Green a truthful man, so far as you knew?

* * * * *

55 A. I don't know that much about him, not in that respect, because I never came in contact with him.

The Court: What do you know about him?

The Witness: Who?

The Court: Joseph Green.

The Witness: Not a thing.

The Court: You said you never heard about him?

The Witness: Yes.

The Court: In what connection did you hear of him?

The Witness: In fact, when he was talking about this divorce business.

The Court: When was that?

The Witness: 1948. I didn't say him. I said Mr. Otto. I heard about him in Mr. Otto's office.

By Mr. Ryan:

* * * * *

56 Q. I said you haven't gone over with Mr. Otto what your testimony would be here? A. No, I didn't have to go over with Mr. Otto what I testified here, tell the truth about things.

Q. You answered Mr. Otto's question in this fashion. He asked you if you knew of your own knowledge that Joshua Harris lived continually from 1922 until the date of his death at the residence on Providence Street, and you answered yes. A. Yes.

Q. Will you tell me how you know of your own knowledge between the years 1931 and 1948 Joshua Harris lived at that address? A. If he had of moved, somebody certainly would have told me about it.

Q. The only way you are testifying you know of your own knowledge that he lived there is because nobody ever told you he moved? A. And I am sure he wouldn't have moved, because anybody living there not having to pay rent, that would be very foolish to move out of there, I would think.

57 Q. You never visited there? A. No.

Q. And you never drove past to look in and see if he was there? A. No, I didn't.

Q. You just weren't concerned about him from 1922 on, anyway, were you?

The Court: Did you answer that?

The Witness: No, I didn't. I was concerned enough to know he was my husband, in case I needed him, I would know where to go to find him. That is one thing.

The Court: Did you learn that he married Sadie Redmond?

The Witness: Only know what I heard.

The Court: You never heard that until 1948?

The Witness: I heard that about — I know it couldn't be true, because I haven't signed no papers for him to get a divorce.

The Court: When did you hear it?

The Witness: I don't know.

The Court: Approximately.

The Witness: People talked, asked me had I heard about it. I said no, I hadn't heard about it, ain't nobody told me nothing.

The Court: Do you remember when it first came to your attention, no matter how it came to your attention, when it first came to your attention he had married Sadie Redmond? Can you give me an idea when it was you first heard about that, at all?

The Witness: I think maybe around about 1936 or 1937. Somewhere around about there.

The Court: 1936 or 1937? He actually got married in June, 1936, so you heard about it shortly after that, very shortly?

The Witness: Yes.

The Court: If you saw him regularly, didn't you go to him and say, "How come you got married to somebody else when you are not divorced from me yet?"

The Witness: I didn't think it was necessary to make a confusion about something of that nature, just let it go on.

The Court: Just let it go?

The Witness: That is right.

The Court: All right.

* * * * *

65 Mrs. Marian J. Bailey, * * *

* * * * *

Direct Examination

By Mr. Otto:

Q. Will you please state your full name and address.
A. Marian J. Bailey, 5211 Madison Chapel Road, Washington, D. C.

Q. Is that your marriage name? A. Yes; that is my marriage name.

Q. And what is your maiden name? A. Brown—Marian Brown.

Q. And did you ever live at 1833 Providence Street, Northeast? A. Yes, I did.

Q. And how long did you live there? A. I lived there from the time I was one year old up until September of 1950.

Q. And who else lived at that address while you
66 were living there? A. Joshua Harris and Lillie Harris, Richard Edwards, and Sadie Harris.

Q. Did you live there continuously from 1923 until the date you stated? A. Yes, I did.

Q. And was Joshua Harris living there? A. Yes, he was.

Q. And what relationship was yours to Joshua Harris?
A. They raised me. They adopted me, not legally; but they raised me.

Q. In other words, you were known as the foster daughter or adopted daughter of Joshua Harris? A. Yes.

Q. Mrs. Bailey, during the years of 1933, 1934, and 1935 were you living at that address? A. Yes, I was.

Q. Was Joshua Harris living at that address? A. Yes, he was.

Q. How often did you see Joshua Harris? A. I saw him every day.

Q. Every day? A. Yes.

Q. To your knowledge was Joshua Harris ever away from that house for any length of time? A. No.

67 Q. And did he take his meals there? A. Yes, he took his meals there.

Q. And you took your meals there? A. Yes, I did.

Q. And all of his belongings were there? A. Yes, they were.

Q. Did he at any time move from that address? A. No, he did not.

Q. Did he receive his mail there? A. Yes, he did.

Q. Do you of your own knowledge know whether or not he was ever a resident of the State of Virginia?

Mr. Ryan: I object to that. That calls for a legal conclusion of this witness.

The Court: It depends upon the meaning attached to the question. Let us reframe it in this way:

Do you know whether he ever lived in Falls Church, Virginia?

The Witness: No.

The Court: Or near Falls Church?

The Witness: No.

The Court: No, what?

The Witness: No, not to my knowledge, he did not.

The Court: In 1935 or 1934?

The Witness: No; he lived on Providence Street.

68 The Court: Did you ever hear of his living over there on Annandale Road, near Falls Church?

The Witness: No.

* * * * *

By Mr. Otto:

Q. I want to be sure of this and I will ask you again: You state you saw Joshua Harris every day? A. Yes, I did.

Q. Especially during the years of 1933, 1934 and 1935? A. Yes, I did.

* * * * *

By Mr. Otto:

Q. I hand you this paper and ask you if you can recognize it? A. Yes, I recognize it.

Q. And where did you get that, or where did you first see that? A. I first saw this paper after Joshua Harris died. I went through his effects and his papers and I saw this.

Q. And what is that? A. It is a divorce decree.

* * * * *

69 By Mr. Otto:

Q. I hand you this, Mrs. Bailey, and ask you if you recognize it. A. Yes.

Q. And what is that? A. A designation of beneficiary.

Q. Do you recognize the signature of Joshua Harris there? A. Yes, I do.

Q. And when did you first see that? A. I saw this for the first time after he died and I went through his effects.

Mr. Otto. This is the same thing that is in evidence.

The Court. All right.

By Mr. Otto:

Q. Mrs. Bailey, when was the first time that you learned of a divorce between Joshua Harris and Mary Ella
70 Harris? A. The first time I actually knew it was when I saw that paper, when I found that paper.

Q. And that was after the death of Joshua Harris? A. Yes, it was.

Q. Now, Mrs. Bailey, do you know Mrs. Mary Ella Harris? A. Yes, I know her.

Q. And when was the first time you became acquainted with her? A. The night before Joshua Harris' funeral.

Cross Examination

By Mr. Ryan:

Q. Mrs. Bailey, how old are you?

* * * * *

A. Twenty-nine.

* * * * *

Q. And it is your testimony that you have lived at all times, until the time of your marriage, at 1833 Providence Street, Northeast? A. Yes.

Q. You were then, in 1933, 11 years old? A. Yes.

Q. And what were you doing then? Going to
71 school? A. Yes, I was.

Q. Did you go to school every day? A. Yes.

Q. Where was Joshua working then? A. He was working for the Federal Work Agency.

* * * * *

Q. And what time of day did he go to work and what time did he come home? A. He had different shifts. Sometimes he worked from four to twelve and sometimes from twelve to eight in the morning. I saw him at least every 24 hours. When he worked in the evening, when I would come home from school he would be gone; but I would see him the following morning when I got up.

Q. He would sometimes be gone when you would come home from school and you wouldn't see him until the next morning? A. That is correct

Q. What part of the house did Joshua occupy? A. The front bedroom—you mean to sleep in?

Q. Yes. A. The front bedroom.

Q. And did anybody occupy that room with him?

A. No.

72 Q. And you don't know of your own knowledge whether he slept there or not, do you? A. Yes, I knew, because of the way the rooms were arranged. When you go up the stairs and into the back bedroom you pass by the doorway of the front bedroom, and if he hadn't been there when he was expected to, I would have missed him, because he always came home.

Q. Are you familiar with Rosa Marshall? A. No, I am not.

Q. Do you know her? A. I don't.

Q. Are you familiar with Joseph Green? A. No.

Q. Do you know Russell Morris? A. No, I do not.

Q. Did Joshua ever speak to you about either of those three named persons? A. No, he did not.

Q. You say you first knew that he had a divorce, after he died? A. That is correct.

Q. Did Mary Ella Harris ever come there to live with him? A. No.

73 Q. You lived there from 1922 on? A. From 1923 on.

Q. Did Joshua live there all that time? A. Yes, he did.

Q. From the same year? A. Yes.

Q. And during that time you have stated that Joshua's stepfather—— A. Yes.

Q. Lillie Harris—— A. Yes.

* * * * *

Q. ——and Sadie Beatrice Harris—— A. She wasn't there then—until they got married in 1936.

Q. They got married in 1936? A. That is right.

Q. Did you say anything to Joshua about with whom he could get married? A. No.

Q. Sadie came there to live, didn't she? A. Yes.

* * * * *

Q. Wasn't the matter ever discussed in your presence? A. I knew he and Sadie Harris were going to get married.

74 Q. You knew Mary Ella was still alive, didn't you? A. I knew he had a first wife, but I didn't know the details.

Q. And you didn't know whether he was divorced from the first wife? A. No.

Q. Did you think the first wife was dead? A. I knew she wasn't dead; that she was living. I knew he had a first wife in Washington who was living.

* * * * *

Q. Thereafter did you on any occasion ever ask Joshua or ever have any discussion with him as to how he got rid of his first wife? A. No, I did not.

* * * * *

75 Q. How many nights a week would he be out, before he got married to Sadie? A. Well, he worked at night a lot of times, and then sometimes he would go over to her house to see her. But I saw him every 24 hours.

Q. How do you fix it that you would see him every 24 hours? A. Not more than that amount of time passed by until I saw him. If he would go to see her in the evening and then go from her house to work, he would then come home the following morning. Or if he worked in the day and went over to her house that night, he would come home later on that night.

76 Q. Do you know that he went to her house, or might not he have gone to a room over in Virginia? A. No; he would say where he was going, because he always told his sister where he was going. He called her Beatrice. He would say "I am going over to Beatrice's."

* * * * *

Q. What did you see Joshua do when you would see him every 24 hours?

* * * * *

A. It all depends upon when he came home. If he had come home late at night, he would get up in the morning and have breakfast or read the paper and sit around and talk until time to go to work.

If he came home in the evening, he would have his evening meal, and listen to the radio and sit around. He didn't go out much.

* * * * *

78 **Rev. Joseph C. Hall,** * * *

* * * * *

Direct Examination

By Mr. Otto:

Q. Will you please state your full name and address.

A. Reverend Joseph C. Hall, 1217 Harvard Street, Northwest, Washington, D. C.

Q. You said "Reverend" Joseph Hall. Are you an ordained minister? A. Yes, sir.

Q. And how long have you been such? A. Twenty years.

Q. Did you know Joshua Harris during his lifetime?

A. I did.

79 Q. And how long did you know him? A. Forty years.

Q. Do you know Mrs. Mary Ella Harris? A. I do.

Q. And how long have you known her? A. About 45 years.

* * * * *

Q. Do you know where Joshua Harris went to live, after he left 233 Virginia Avenue, Southwest? A. Ivy City.

Q. What is the exact address? A. I wouldn't know the address of that house. I know the house.

* * * * *

80 By Mr. Otto:

Q. Ivy City—that is in Northeast, isn't it? A. yes, sir.

* * * * *

Q. Where Joshua Harris lived, how often did you visit him? A. I visited quite frequently.

Q. How often would you say? A. Well, sometimes twice a week, sometimes twice a month. He was a friend of mine.

Q. And when you visited Joshua Harris, especially during the years of 1933, 1934 and 1935, who else was living with him? A. His sister and his father and the girl they raised, by the name of Brown.

Q. Are you referring to Marian J. Brown? A. Yes, sir.

81 Q. And to your knowledge what was her relationship to Joshua Harris? A. This girl?

Q. Yes. A. Just one of the family.

The Court. You said they raised her.

The Witness. I said they raised her.

By Mr. Otto:

* * * * *

Q. During the years 1933, 1934 and 1935, how often did you visit him? A. Sometimes twice a week and sometimes twice a month, I said.

* * * * *

Q. Do you know whether or not Joshua Harris ever lived in Virginia? A. I know he didn't live in Virginia, the whole time I knew him.

Q. And you have known him for about 40 years? A. Yes.

* * * * *

82 *Cross Examination*

By Mr. Ryan:

* * * * *

Q. You visited him always, did you, at the house he occupied in Providence Street or Ivy City? A. Yes, sir.

Q. Wasn't there a period of that 40 years, Reverend, when he was living some place else? A. That is right.

* * * * *

Q. Where was the other residence at which you visited him? A. The other one was Second Street, Southwest.

Q. Did you ever visit him on Virginia Avenue, Southwest? A. Yes.

* * * * *

Q. Well, during what years was it you visited him on Second Street? A. It must have been around 1937 and 1938, around there.

Q. What years was it you visited him on Virginia Avenue? A. Around in the twenties.

84 Q. Let me get those dates straight. You say it was around 1927 and 1928 you visited him on Second Street? A. No.

Q. Nineteen thirty-seven and thirty-eight? A. Yes, sir.

Q. Around 1937 and 1938 on Second Street. A. And in the twenties on Virginia Avenue.

* * * * *

Q. In whose house did he live on Second Street? A. Mrs. Redmond's.

* * * * *

Q. He lived there with her in 1937 and 1938? A. Yes.

Q. He didn't live on Providence Street at that time? A. No.

Q. You are sure of that. And you are just as sure of that, Reverend, as you are of the fact that you visited him regularly a couple of times a week or a couple of times a month during the years 1933, 1934 and 1935 at Providence Street? A. Yes.

* * * * *

85 The Court. Have you ever heard he lived for any period of time near Falls Church, Virginia?

The Witness. No, sir.

The Court. You never did?

The Witness. No, sir.

The Court. Did he ever tell you he had been divorced from his wife, Mary Ella?

The Witness. Yes, sir.

The Court. When did he tell you that? Can you fix approximately the year when you first learned of it?

86 The Witness. It was around 1937, Your Honor, when I met him and he carried me over to the Second Street address, and then he told me he had been divorced.

The Court. And did he tell you he had also remarried?

The Witness. Yes, sir.

The Court. Did you know Mary Ella Harris, who sits here?

The Witness. Yes, sir.

The Court. I believe you have told us that already. After he told you he had been divorced and was remarried, did you continue to see Mary Ella Harris from time to time?

The Witness. Yes, sir. On occasions I would see her in church.

* * * * *

The Court. Did she ever tell you she knew Joshua had been divorced from her?

The Witness. No, sir.

The Court. She never did?

The Witness. No, sir.

The Court. Did you ever discuss it with her, the
87 fact of his having been divorced from her and having remarried?

The Witness. Yes, I discussed it with her.

The Court. What do you recall of anything she said about the fact, either that he was divorced or remarried, or both?

The Witness. Well, once when I discussed it with her, Mrs. Harris said she would let time take care of the situation.

The Court. Did she say what she meant by that?

The Witness. I believe she meant that in God's own time he would bring things to pass.

* * * * *

Q. Did you also visit Joshua after he remarried? A. I said I visited him in 1937, sir.

* * * * *

Q. And at what address or what locale did you visit them then? A. At Second Street.

88 Q. I see. You didn't visit them any further at Ivy City, after Joshua married Sadie Beatrice Redmond? A. No, sir, because she was down there when I left.

* * * * *

Miss Florence Bertie Parker, * * *

Direct Examination

By Mr. Otto:

Q. Will you please state your full name and address.

A. Florence Bertie Parker, 1828 Providence Street, Northeast.

Q. And, Miss Parker, how long have you lived at that address? A. About 34 years.

Q. Did you know Joshua Harris during his lifetime? A. Yes—ever since I was a little girl of seven. I would say about 25 or 30 years.

Q. And where did Joshua Harris live? A. Right across the street from me.

89 Q. What was the address? A. I don't know. It was 1827 or something. I don't know it exactly.

Q. Eighteen thirty-three—would that refresh your recollection? A. Yes.

The Court. Providence Street.

The Witness. Yes, 1833 Providence Street.

By Mr. Otto:

Q. And how long did Joshua Harris live at that address? A. I don't know. But he was there when I moved out there.

Q. He was there when you moved there? A. Yes.

Q. And you moved there when? A. It was in August, about 34 years ago.

Q. Joshua Harris was living there then? A. Yes.

Q. Did he continue to live there? A. As far as I know, yes.

Q. How often did you see Joshua Harris? A. Oh, I don't know. Sometimes two or three times a week, just passing by, to speak.

Q. And who else lived in that house besides Joshua Harris? A. Well, I remember his sister, and his adopted daughter.

90 Q. His adopted daughter, do you remember her name? A. Marian.

Q. Did you have occasion to visit Joshua Harris at his home during the years 1933, 1934 and 1935? A. Well, I went in now and then, to visit his sister, and I would see him. But to say visit personally, not as to him; but I would go in the house to visit them.

Q. Did you see him? A. Yes, I saw him.

Q. Do you of your own knowledge know whether or not he ever lived in Falls Church, Virginia? A. That I don't know. I don't remember.

Q. But he did reside at 1833 Providence Street for the 34 years that you have known? A. Yes. That is the only place I saw him.

* * * * *

Cross Examination

By Mr. Ryan:

Q. Miss Parker, do you know of a time when he stopped living there and went to live on Second Street? A. I don't know anything of that at all.

The Court. Second Street, Southwest.

The Witness. No, I don't know anything about that.

By Mr. Ryan:

91 Q. What was the longest period of time you didn't actually see Joshua? A. That I don't know. I have seen him occasionally on different days; but I can't ever remember any length of time of not seeing him.

Q. What would you say is the longest period of time without seeing him? A. I have never went two or three weeks without seeing him.

Q. Do you know whether or not he slept—of your own personal knowledge—whether or not he slept at 1833 Providence Street? A. I guess he did. I don't know.

Q. You don't know that? A. But he lived there and I have seen him coming in and out.

Q. What else did you see him do with regard to living there? A. Sitting on his porch, going to work—and that is about all, because I go to work, too.

Q. You have stated, in response to Mr. Otto's question, you knew he lived there during 1933, 1934 and 1935. What did you see him do and on what dates on those occasions? A. What did I see him do?

Q. Yes. A. Just going to and fro to work, or
92 sitting on his porch, and speaking to him. That is as far as I know.

* * * * *

Q. Miss Parker, can you fix any definite date, in any one of those three years, when you can tell us, under oath in this Court, with definite certainty, that you saw Joshua Harris do any particular act at those premises? A. No, I couldn't, except what I have just said.

Q. But you can't tell us particularly? A. No.

Q. On any date during that time that you actually saw him do anything that fixes that date in your mind? A. No.

* * * * *

93 Q. Do you know when Sadie Beatrice Harris came to live there? A. I know she did, but not the date.

Q. How many years ago did she come to live there? A. I know it was five or six, but I wouldn't say definitely.

* * * * *

94 Q. Did you ever have any conversation with Joshua about either his marriage to Sadie or any divorce or anything of that sort? A. No.

Q. And do you know Rosa Marshall? Did you ever hear of her? A. No.

Q. Do you know Joseph Green? A. No.

* * * * *

Frank R. Hawkins, * * *

Direct Examination

By Mr. Otto:

Q. Will you please state your full name and address.

A. Frank R. Hawkins, 1835 Providence Street, Northeast.

Q. Now, Mr. Hawkins, how long have you lived at
95 that address? A. I have lived at that address since
1910.

Q. Did you know Joshua Harris during his lifetime?
A. I did.

Q. Did you have an occasion to visit with him? A. I
did.

Q. At 1833 Providence Street? A. I did.

Q. In particular, during the years of 1933, 1934 and
1935— A. I did.

Q. —did you visit Joshua Harris— A. Yes.

Q. —at his home? A. At his home, next door.

Q. Who was living with him at that address? A. At
that time his stepfather, a sister, and Marian, a girl they
were raising. That was all.

Q. How often did you visit Joshua Harris? A. Well, I
would see him practically every Sunday, or every Satur-
day.

96 By Mr. Otto:

Q. Have you ever visited Joshua Harris in his
home? A. Yes, I have.

Q. And do you know of your own knowledge whether or
not he has ever lived at any other address besides 1833
Providence Street? A. I have never missed him from his
home to live at any particular time at any other address,
from the time that I met him, after he came back from the
war, up to the time of his death. I can swear to the fact,

as far as I am concerned, that I have never missed Mr. Harris from his home.

* * * * *

Cross Examination

By Mr. Ryan:

Q. Mr. Hawkins, you were in weekly conversation for how many years with Mr. Harris? A. From the
97 time that Mr. Harris came and lived after the World War, up until the present time when he died.

Q. And what year did he come there to live? A. I cannot exactly say what year he came there to live.

* * * * *

By Mr. Ryan:

Q. You fix, then, the start of your acquaintanceship with Joshua Harris as being the time that Joshua moved there, and that that time is somewhere around 1927, 1928 or 1929. Is that right? A. Whatever year it was, I have been knowing him continuously from that time up to his death. I wouldn't commit myself on the exact year. I don't remember it. But I know from the first time that I was acquainted with him, until the time of his death, that I have been knowing him.

Q. And you had conversations with him at least once a week, because you cut your hedges together? A. Definitely, after I met Mr. Harris and he was our neighbor, and both of us seemed to have a great deal in common
98 about certain things, and he was doing a job similar to the one I have been doing. We both had dependents that we were both fond of. And those were some of the things we would talk about—that regardless of what happened, that we still had certain obligations that must be carried out. So in that way it wasn't an ordinary acquaintance. It was more of a friendship that existed because of something that was common to both.

Q. Now, you said this sprung up because each of you had a hedge to clip every week. What did you have in common during the winter months when you weren't clipping hedges? A. Well, I would see Mr. Harris quite frequently during that time.

Q. How frequently did you see him during that time? A. Well, we had another connection through more or less a cousin of mine; and Mr. Harris and the cousin would get together on several evenings and my cousin would come around to my house. And by that I knew—I could not swear—but I do know that he had to be there, in order to talk to my cousin.

* * * * *

99 Q. Now you have testified here, Mr. Hawkins, and I am assuming because you are under oath that it is truthful testimony, that you have observed Mr. Harris living there at the same address during 1933, 1934 and 1935. A. That is right.

* * * * *

100 Q. I am asking you, during 1933, 1934 and 1935 what was the longest period you didn't come in contact with Joshua Harris? A. That I did come in contact with Joshua Harris?

Q. Did not.

The Court. What was the longest period that elapsed that you didn't see him at all?

The Witness. I don't remember any period that I did not see him, no.

By Mr. Ryan:

Q. For how long? A day, or an hour? A. Oh, it could be at least once a month. I mean, definitely it could be more. But I know I have seen him continuously up until the time he died.

* * * * *

101 Q. Did he discuss with you the fact that he was getting a divorce from his wife? A. I never knew he had a wife.

Q. You never knew Mary Ella? A. No, sir; I did not.

Q. When did Sadie come there to live? A. As to the exact time, I don't know.

Q. As to the exact year, can you tell me? A. No, I couldn't, because, after all, that was irrelevant to what he and I had in common. If he got married, so he got married. That is all it was to me. And as for any other wife, I never knew of her.

Q. In what year did you first see Sadie come there
102 to live? A. I truthfully cannot say the exact year, just the same—I can't say the exact year she came. I knew it was after the war.

Q. It was after the war? A. No. If I am not mistaken, it was before the war. Wait a minute. It was before the war.

103 Q. Do you ever remember any time, from the time he did come there first to reside, that he lived anywhere else? A. From that time on, as I am truthfully stating, up until his death, I don't remember any
104 time of him being away. I can't say that he wasn't, but I don't remember it.

Q. You don't know, as a matter of fact, whether he obtained a room and lodging in some other neighboring community or not, do you? A. I never heard anything about it.

Mrs. Ernestine Wallace,

Direct Examination

By Mr. Otto:

Q. Will you state your full name and address. A. Mrs. Ernestine Wallace, 1849 Providence Street, Northeast.

Q. How long have you lived at that address? A. Well, I was born there, and I have been there 40 years. I am 40 years old.

Q. Did you know Joshua Harris during his lifetime? A. Well, definitely I have known him ever since 1927. That is 23 years.

105 Q. And where did he live? A. Well, he was living in the same house, up the street, I think 1833 Providence.

Q. And did you have an occasion or have occasions to visit the residence of Joshua Harris? A. Well, during the 23 years I visited there morning and night, because his stepfather was an invalid and his sister had arthritis, and I used to go up there and help her in the morning and help her in the evening.

Q. And who else lived in that house with Joshua Harris? A. Sadie Harris; Mrs. Harris' sister, Lillie Harris; and a girl, Marian Bailey.

Q. Her maiden name was Marian Brown? Is that correct? A. Yes.

Q. And referring especially to the years 1933, 1934 and 1935, did you have occasion to visit the residence of Joshua Harris? A. Yes.

Q. And how often did you visit that residence? A. How often did I visit?

Q. Yes. A. Every day.

Q. And did you see Joshua Harris during those years at that address? A. I certainly did.

106 Q. How often? A. Well, if I didn't see him in the morning, I would see him in the evening, because he had different shifts at work, different hours.

Q. In other words, you saw him every day? A. Yes, I saw him every day.

Q. During the years 1933, 1934 and 1935? A. Yes, until he went to the hospital.

Q. Do you know whether or not Joshua Harris ever lived at any other address, at any time? A. No, I do not, no.

Mr. Otto. That is all.

Cross Examination

By Mr. Ryan:

* * * * *

Q. And after you were married, while you were pregnant with your baby, did you still continue to visit
107 the Harris house every day? A. I really did, and never stopped. I would go up there.

* * * * *

Q. And never a day passed during this entire interval, from the time when you first started going there, right up until Joshua's death, but you were there every day? A. Yes; I went there every day, to get the coal in, and sweep, and do little things for his sister.

* * * * *

108 Q. Will you tell me how you fix 1933 and 1934 and 1935 as years during which Joshua lived at that address? A. Did what?

Q. How do you fix those three years as being years in which Joshua Harris lived at Providence Street?
109 A. Because he and his wife lived there.

Q. Oh, he and his wife lived there during those years? A. Yes, they lived there.

Q. During those three years? A. I don't remember of him being away from there since he was married.

Q. And who is the wife who lived there with him during those years?—which one of these two women? A. Well, Mrs. Sadie Harris.

Q. And that is the woman on the left? A. Yes; she was living there in the house.

Q. And she lived there during those three years? A. she lived at the house.

Q. With Joshua? A. With him.

Q. And Joshua lived there at that time with her? A. Both of them lived there together.

* * * * *

110 (Counsel having been heard, the Court ruled as follows:)

Ruling.

The Court. This Court is called upon, by petition for instructions filed by the administrator de bonis non cum testamento annexo for this estate, collaterally to attack the judgment of a Virginia court which in 1935 granted a divorce to Joshua Harris, the deceased in this case.

In my judgment it would be inequitable for this Court to go into the matter of whether the Virginia court had jurisdiction, for the reason that it is beyond dispute that relatively shortly after the divorce was obtained, Mary Ella Harris knew about it, as apparently did most of Mr. Harris' friends. Mary Ella Harris knew about it; but she took no step at any time, anywhere, to attack that judgment. After Mr. Harris died, in 1948, she among others was served with process early in January 1949. She at no time, apparently from the record even until today, has herself sought to set aside that judgment. She did not respond by answer to the petition for probate of the will, which will on its face recited the fact that Sadie Beatrice Harris was the wife of the testator. No step was taken to bring into question the Virginia judgment until August 18, 1950, just about two years after the death of the testator, when Mr. Otto, the administrator d.b.n. c.t.a., filed his petition for instructions.

111 This Court therefore will not disturb the judgment of the Virginia court, and the administrator will be instructed to accord the dower in the proper manner according to law to Sadie Beatrice Harris as the legal widow of Joshua Harris.

No. 11,148

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals

For the

District of Columbia Circuit

FILED OCT 10 1951

MARY ELLA HARRIS, *Appellant*

v.

SADIE BEATRICE HARRIS, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

HARRY L. RYAN, JR.,
B. HOWELL HILL, JR.,
815 15th Street N. W.,
Attorneys for Appellee.

No. 11,148

QUESTIONS PRESENTED

Appellee adopts the questions upon appeal as stated by appellant herein as being the basic questions for consideration herein.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,148

MARY ELLA HARRIS, *Appellant*,

v.

SADIE BEATRICE HARRIS, *Appellee*.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In the second paragraph of appellant's statement of the case (Appellant's Br. 2), she contends that in the original Petition for Probate of the decedent's will herein that she and appellee "each made claim of dower in the Estate of Joshua Harris, deceased."

Paragraph 3 of appellant's statement restates in similar fashion a like recitation.

Examination of the contents of the Petitions referred to in each of the foregoing statements immediately reveals that the assertion that "each made claim of dower" is not justified in any manner by said petitions, for the same are completely devoid of any claim of "dower" but merely recite that appellant and appellee each "claims to be the legal widow" of decedent (J. App. 3, 4).

Neither of the pleadings was filed for or on behalf of appellant, nor did she execute them or at any time adopt them as her own. Both of said pleadings were instruments of a party in every way foreign to the issues now being presented for the determination of this Court.

Decedent's will identified his surviving wife (appellee) as Sadie Beatrice Harris and provided for her dower interests in his estate (J. App. 2).

The record herein further discloses that the decedent died September 24, 1948, (J. App. 29) and that proceedings were thereafter promptly instituted for the admission of his will to probate. Appellant was named as a controversial widow in the original petition and also more than a year later was similarly named in a further petition. Citation from the Probate Court was duly issued to appellant in each instant, and personally served upon her.

Appellant, although so served, made no appearance in the proceedings, nor asserted any right therein in any way disputing decedent's will or making any claim to any share of decedent's estate. The record thus in this status supported decedent's will and his declaration of appellee as his wife.

After nearly two years of such continuing status the present administrator, d.b.n., c.t.a. filed a petition for instructions from the Probate Court for a determination of

the identity of decedent's widow, and thereby the person entitled to dower interests in his estate. To that time no affirmative action of any kind was taken either by or on behalf of the appellant which could in any manner even approach a challenge to the decedent's own determination of his widow.

Thereupon appellant, through the personage of the Administrator d.b.n., c.t.a., after having been named as a respondent, filed an answer to the Petition for Instructions and for the first time in any proceedings pertaining to the marital status of the decedent questioned his marriage to appellee and requested that "her claim to Dower" be acknowledged. (J. App. 10) It does not further appear of record that even to this time any other "claim" of dower has been claimed in these proceedings by appellant.

The pretrial proceedings (J. App. 15, 16) again indicate that the action was deemed one between the representative of decedent's estate as plaintiff and appellee as defendant. No characterization of appellant as either plaintiff or defendant in any wise appears therein nor was there any claim for dower therein asserted on behalf of appellant.

The record then further discloses that, although appellant knew within a very short while after the same of decedent's divorce from her, and of his subsequent remarriage to appellee, she on no occasion either during his lifetime or even on her own behalf after his death took any affirmative steps to attack said divorce or to establish any claim to dower interests as are herein involved. (J. App. 45)

Appellant and the decedent were married November 22, 1917, and lived together in the District of Columbia until October, 1922, when they separated, decedent leaving appellant. From then until his death nearly twenty-

six years later there was never any resumption of marital relations by and between them or dealings of any kind or nature whatsoever. (J. App. 38, 39, 45)

In 1935 the decedent instituted suit for and obtained a decree of divorce from the appellant in Virginia, and the record clearly supports proof of service of process personally upon her, although appellant evasively denied having been so served with process. (Exhibit 3, J. App. 20, 21)

The service of process made upon appellant was admittedly in the District of Columbia and therefore substituted service, but it clearly informed appellant of the fact that decedent was suing her for a divorce on the grounds of wilful abandonment for more than two years, and in bold print, of the time within which she must answer if she desired to contest the same in any manner. (Exhibit 3, J. App. 20, 21).

In the divorce proceeding the Commissioner in Chancery related that he had made a personal investigation pertaining to the decedent's residence and from that investigation and from supporting evidence found decedent to be a bona fide resident of and domiciled in the State of Virginia, and further that decedent had fully supported his allegations of desertion and was entitled to a decree of divorce, a *vinculo matrimonii*, which was thereafter duly granted by the Court itself after consideration of the Chancery Commissioner's report. (J. App. 22, 23, 13, 14) No action was ever taken thereafter by appellant to in any manner vacate such decree and the same is still outstanding and in full force and effect.

The appellant admitted beyond all doubt that she knew from 1936 or 1937 that the decedent and she were divorced and that he was purportedly remarried to the appellee herein. In regard to this, appellant took no action. (J. App. 42, 45).

Actually, appellant's first affirmative action on her own behalf was the noting of her appeal herein from an adverse determination of her interests in a matter in which both she and appellee were respondents.

STATUTES INVOLVED

District of Columbia Code (1940 Ed.), Title 18, Section 211:

"A widow shall be barred of her right of dower in the land and share in the personal estate by any such devise or bequest unless within six months after administration may be granted on her husband's estate she shall file in the probate court a written renunciation to the following effect. * * *"

Virginia Code (1942 Ed.), Section 6071:

"* * * Personal service of the summons, scire facias, or notice, may be made by any person not a party to or otherwise interested in the subject matter in controversy, on a non-resident defendant out of this State, which service shall have the same effect, and no other, as an order of publication duly executed, or the publication of a copy of process or of notice under this chapter, as the case may be. In such case the return shall be made under oath, and shall show the time and place of such service, and that the defendant so served is a non-resident of this State. Upon any trial or hearing under this section such judgment, decree or order shall be entered as may appear just."

Virginia Code (1942 Ed.), Section 6072:

"Any unknown party, or other defendant, who was not served with process, and did not appear in the case before the date of such judgment, decree, or order, or the representative of any such, may, within two years from that date, if he be not served with a copy of such judgment, decree, or order, more than a year before the end of the said two years, and if he be so served, then within one year from the time of such service, petition to have the case

reheard, and may plead or answer, and have any injustice in the proceedings corrected."

SUMMARY OF ARGUMENT

1. Appellant with knowledge of her late husband's divorce took no steps for more than twelve (12) years to contest the validity of the same and is therefore estopped from now contesting its validity.

2. There is a presumption of the validity of the decree of divorce obtained by the decedent, either through service on appellant of process relating thereto or through the failure thereafter of appellant to take the steps afforded her legally to contest the same as permitted in the State where the same was obtained.

3. There is a presumption of validity of decedent's remarriage after his decree of divorce.

4. The appellant herein at no time affirmatively took any action to seek the rights now the subject of this appeal.

ARGUMENT

Appellant is Estopped from Attacking Decedent's Divorce Decree.

The appellant herein knew almost immediately of her former husband's divorce and of his remarriage. This was admittedly true regardless of whether or not she received actual notice of the institution of decedent's action for the same and accordingly appellant's present position claiming dower rights in his estate is untenable under the doctrine of estoppel without regard to any legal determination of whether or not she was actually served with notice of the pending divorce action since she would now also be estopped through laches to ques-

tion the validity of the divorce decree and decedent's remarriage in reliance thereupon.

This Court in declining to consider the validity of a questionable divorce decree obtained nine years prior to the attempted contest thereof in the case of *Bliss v. Bliss*, 60 App. D. C. 237) held:

"* * * The bill shows that the things which plaintiff seeks to accomplish, namely, the annulment of the divorce and the cancellation of the contracts made by her coincidentally therewith, occurred nine years before the filing of her bill, and she fails to show any reason or excuse for the delay in seeking relief therefrom. Courts always discourage stale demands in the interest of the peace of society, or as was said by Mr. Justice Gray in *Spiedel v. Henrici*, 120 U. S. 377, 387, * * * 'Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights, and shows no excuse for his laches in asserting them.' * * *"

Here appellant having full knowledge of decedent's activities slept on her rights without taking any affirmative action to protect them, if such rights did in fact lawfully exist, for thirteen years.

The principle applying the doctrine of laches and estoppel to the appellant's position in this proceeding is further well established by the decisions of this Court in the following cases:

Goodloe v. Hawk, 72 App. D. C. 287.

Saul v. Saul, 74 App. D. C. 287.

Ruppert v. Ruppert, 77 U. S. App. D. C. 65.

Unquestionably the trial court was applying the foregoing principles to appellant herein for in its opinion the court stated: "* * * In my judgment it would be inequitable for this Court to go into the matter of whether or not the Virginia Court had jurisdiction, for the reason that it is beyond dispute that relatively shortly after the

divorce was obtained, Mary Ella Harris knew about it; but she took no step at any time, anywhere, to attack that judgment. After Mr. Harris died, in 1948, she among others was served with process early in January 1949. She at no time, apparently from the record *even until today*, has herself sought to set aside that judgment * * *." (underscoring appellee's)

Appellee urges that the foregoing is especially significant in that while many avenues were open to the appellant she shunned them all.

To summarize some of them, consider the following. If in fact appellant was served with process as the record discloses, and decedent had wrongfully deserted her, or was not legally a resident of Virginia as she now contends, she could unquestionably have first asserted this in defense of decedent's Virginia action or even latterly could have sought either criminal or civil action here in the District of Columbia.

Thereafter and in the interval between his divorce and his death she could unquestionably have sought and likely obtained support and maintenance from the decedent as her lawful husband if again his divorce was illegal.

Finally, at the time of his death a number of further recourses invited her action.

Upon citation to her as a questioned heir at law or next of kin she could have immediately and affirmatively asserted her claim as purported legal widow by answering the citation.

She could and should have affirmatively either caveated decedent's will upon the basis of her now claimed status or at the very least in the alternative laid claim to a widow's dower interest as provided in Title 18, Section 211, of the District of Columbia Code.

She saw fit to do none of these. Finally, when practically compelled to answer a petition filed for instructions, appellant's answer was filed which again avoided all semblance of affirmative action and in effect merely adopted a position of "Let the Court decide." When the Court did decide, appellant at long last became dissatisfied, sprang to life, and said the Court's action was erroneous. This should not gain this Court's approval. It is hard to conceive of a clearer case of estoppel and laches.

Let us now consider appellee's position herein in the eyes of justice.

A Presumption of the Validity of Appellee's Marriage and Thereby Her Widowhood and Dower Interests Herein Exists Upon Two Bases, First on the Facts, Second on the Law.

F A C T S

1. In 1935 appellee's late husband obtained a decree of absolute divorce from his then wife.

2. Appellee, who had been married previously, consulted an attorney, paid him his fee for which he issued a receipt, and upon being advised that she was free to marry, did so marry decedent. (J. App. 14, 21, Exhibits B, 4)

3. Appellee was still married to decedent at the time of his death and no action for any divorce was ever instituted as to them.

4. Presuming that appellee at the time of her marriage to decedent was still legally married to Owen Redmond, her former husband, through the failure to have obtained any legal dissolution of said marriage, regardless of belief in this regard, the said Owen Redmond did die in December, 1941, and thereafter until the death of the decedent herein appellee remained his spouse. Incidentally, the death certificate of appellee's former

husband gave his marital status as then being divorced. (J. App. 22, Exhibit 6)

L A W

1. Decedent's decree of divorce was presumed valid, and the burden to disprove validity thereof was upon appellant, affirmatively and not upon any one else collaterally.

2. The marriage of decedent and appellee is presumptively valid and no justification for any other determination was proved herein.

Touching upon the foregoing, appellant testified that she was not personally served with process in decedent's divorce proceedings. The record unqualifiedly shows that she was so served. On this fact, the trial Judge's determination may not now be disturbed unless clearly wrong and the same is not clearly wrong. See the following decisions of this Court:

Cole v. Cole, 52 App. D. C. 302.

Diggs v. Diggs, 53 App. D. C. 56.

Blundon v. Blundon, 56 App. D. C. 313.

If appellant was so served the same fully met the requirements of the then pertaining Virginia Statutes, Section 6071, Virginia Code (1942 Ed.) and even if appellant was not served she, by her own admissions (J. App. 42, 45) took no action whatever to contest the same after knowledge thereof and during the decedent's lifetime.

Under the laws of Virginia wherein the decree was granted, appellant herein with her knowledge of her husband's divorce and remarriage in 1936 or 1937 as she stated was provided an absolute right as a defendant, even had she not been originally served in her husband's action to nevertheless within an additional two years, contest the same. Virginia Code (1942 Ed.) Section 6072. *Sims v. Sims*, 140 Va. 435, 126 S. E. 486.

Appellant's failure to take such steps within that time forever precluded her direct attack upon her husband's decree in Virginia. *Johnson v. Merritt*, 125 Va. 162, 99 S. E. 785.

The appellee relied upon the foregoing decree and also upon her counsel, a member of the Bar of this Court. While it may be open to question as to whether or not under the circumstances appellee could or should have married the decedent in 1936, she had not seen or heard from her husband since 1917 and nineteen years having elapsed between that date and her marriage to decedent it would seem to imply that the pronouncements of this Court in the case of *Harsley v. United States*, No. 10,507, decided January 18, 1951, should apply creating a presumption of the validity of her marriage to the decedent.

Such a presumption of validity of a second marriage was also found to exist in the following cases:

Sy Joc Lieng v. Gregorio Sy Quia, 228 U. S. 335.
Modern Woodmen, etc. v. Barnes, 61 F. Supp. 660.
 (Also see Annotation 14 A. L. R. 2d 11)

Coupled with such presumption, appellee submits that regardless of whether or not the Court should feel that the present unsettled state pertaining to the effect of the "Full Faith and Credit" clause could apply herein, appellee believes that under the doctrine of comity long recognized and followed by this Court, public policy as well as the full reliance by appellee and the decedent upon the validity of decedent's divorce decree, dictate continued recognition of validity of that decree by this Court. Under similar circumstances this Court has so done. *Atkinson v. Atkinson*, 65 App. D. C. 241 and *Hellmuth v. Hellmuth*, 69 App. D. C. 64.

It is uncontradicted from the evidence that from 1941 until his death decedent and appellee were husband and wife whether by their civil ceremony or at common law

and accordingly determination must continually revolve upon the basic issues hereinbefore reflected upon; namely, appellant's total lack of affirmative attack and her estoppel regardless of whether her ultimate attack be deemed direct, collateral, indirect or in any other capacity. The result is inescapable. The lower Court was more than amply justified in treating appellant's efforts herein as coming too late and not warranting any finding other than that appellee should be found to be decedent's surviving widow and thereby the sole person entitled to dower interest in his estate.

This brings about one final consideration. This action was not brought as any attack upon decedent's purported divorce decree. It was brought solely for instructions to the representative of a decedent's estate. Those instructions were given and the party seeking them should in no way be concerned in this action. He has no interest adverse or otherwise, presumably in such instructions and primarily was without any legal justification in even seeking a judicial determination of the validity of decedent's divorce decree. Annotation - 12 A. L. R. 2d 729.

CONCLUSION

From all of the foregoing, but one conclusion can be logically reached. Appellant herein from every consideration to which she is entitled is precluded both factually and legally from reversing the action of the lower Court, and its instructions to the Administrator, d.b.n., c.t.a. of the Estate of Joshua Harris, deceased, should be affirmed.

Respectfully submitted,

HARRY L. RYAN, JR.,
and
B. HOWELL HILL, JR.

By: HARRY L. RYAN, JR.,
815 Fifteenth Street, N. W.,
Washington 5, D. C.,
Attorneys for Appellee.

United States Court of Appeals

United States Court of Appeals
For the
District of Columbia Circuit

FOR THE DISTRICT OF COLUMBIA

MAR 27 1952

No. 11148

Joseph W. Stewart
CLERK

MARY ELLA HARRIS, *Appellant*,

v.

SADIE BEATRICE HARRIS, *Appellee*.

APPELLANT'S PETITION FOR REHEARING

The appellant, by her attorney of record, petitions the Court to grant a rehearing in the above-entitled cause, and upon a rehearing and further consideration hereof that the judgment entered herein on February 28, 1952, be reversed and entered in favor of petitioner, and for grounds of this petition states as follows:

1. With innate respect and humility towards the Court, the admonition of the petitioner is that the court's decision is based on incorrect legal principles because of a misconception of applicable law and a misapprehension of the facts involved.

2. The logic of the clear intention of the precise wording of the will of Joshua Harris, deceased, unmistakably shows three things: first, the testator definitely desired his sister, Lillie Harris, to have all of his estate; second, either of testator's own knowledge or upon advice of counsel, the testator knew or was advised that his sister could not under

law receive the benefits of his entire estate if he, the testator, had a living wife at the time of his demise, as a result thereof, he inserted in his will the precise technical words "subject only to the Dower right of my wife;" third, that in a normal situation of the relationship of a husband and wife, each or both in making a will, usually provide for each other first, not as an after-thought, nor under the compulsion of law. The record clearly shows that Joshua Harris, deceased, and Sadie Beatrice Harris were separated at the time of making the will, which adds impetus to the logic that Joshua Harris, deceased, by his will, reluctantly and repugantly, created dower rights and only did so by the requirements of law, and by simple analogy, reluctantly and repugantly named Sadie Beatrice Harris in his will. It is submitted that there is no legal principle of law that a legal wife is or can be created by naming such a person as such, specifically, in a will, thereby depriving a factual and legal wife of an invested dower right.

3. The Court's attention is called to the fact that it failed or refused to act upon a prime issue. The record clearly shows that all parties to the action and the order of the Pre-Trial Court stipulated, in substance, that the only issue involved was the validity of the foreign decree of divorce procured by the deceased, Joshua Harris, and further, that the lower court permitted the appellant to present her entire case without contradiction, and then ruled, that the validity of the foreign decree of divorce was not an issue, was inconsequential, and actually, that the only issue was that of laches, totally disregarding the Pre-Trial Order and the appellant's right to believe that the only issue to be resolved was the validity of the foreign decree of divorce. It is submitted that this Court should not have acquiesced in such a manoeuvre by implication. The Court's decision was devoid on this point raised by appellant's appeal,

though "adopted" as a point raised by appellant and appellee in "Questions Presented."

4. The Court, in following implicitly the logic of the lower court in arriving at its decision, acted inconceivably. Neither the applicable law nor the record of the case shows such infallibility. By so doing, it is submitted that this Court, incomprehensibly adheres to the principles of hearsay evidence, presumptions un rebuttable, disregard and distortion of the law applicable, disregard and distortion of the evidence of record, and last but not least, a condonation of subterfuge, fraud and immorality, yielding to punishment for virtue and righteousness. It is humbly submitted that these assertions are clear and unequivocal by merely reading the record with logical interpretations and in the same vein applying legal principles of law which this Court has sanctioned and the Supreme Court of the United States has equally condoned.

5. It is submitted that no legal principle is better settled or more consistently followed by the Supreme Court of the United States and this Court, than that if a divorce decree is to be accorded full faith and credit, in the courts of a sister state, it is necessary that the court granting the decree have proper jurisdiction over the divorce proceedings, and a failure of jurisdiction renders the decree null and void.

Lack of jurisdiction was the issue in this case, a lack which was proved by the preponderance of the record. Associate Judge Miller, in a dissenting opinion, in the case of *Rupert v. Rupert*, 77 U. S. App. D. C. 5 (which dissenting opinion actually only disagreed with the majority opinion as to returning the case to the lower court for further hearing (recited, "No other finding or conclusion is possible than that fraud was practiced upon the Virginia Court.

This being true, the question of laches and estoppel, or participation by appellee in the fraud, are immaterial."

STANLEY E. OTTO,
Attorney for Appellant,
1219 Good Hope Road, S. E.
LU. 4-3100.

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing petition was served upon Harry L. Ryan, Jr., counsel for appellee, by mailing postpaid, to his address at his office, 815 15th Street, N. W., Washington 5, D. C.

STANLEY E. OTTO.

I, Stanley E. Otto, attorney for appellant, do hereby certify that this petition is presented in good faith and not for delay.

STANLEY E. OTTO.

